142
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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 862)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

FILED SEPTEMBER 6, 1946.

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VOL. I

INDEX

	Original	Print
Record from D. C. U. S., Southern District of Indiana	1	1
Placita (omitted in printing)	1	
Petition—Case No. 1072	2	1
Petition—Case No. 1076	5	41
Designation of Honorable Evan A. Evans and Honorable Michael L. Igoe, Judges—Case No. 1072	7	50
Proof of Notice to Attorney General for the United States of America and to the Interstate Commerce Commission—Case No. 1072	9	50
Order assigning case for final hearing on March 25, 1946—Case No. 1072	11	51
Designation of Honorable Evan A. Evans and Honorable Michael L. Igoe, Judges—Case No. 1076	13	52
Proof of notice to Attorney General for the United States of America and to the Interstate Commerce Commission—Case No. 1076	15	53
Order assigning case for final hearing on March 25, 1946—Case No. 1076	17	54

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEB. 3, 1947.

—8884

Record from D. C. U. S., Southern District of Indiana—Continued	Original	Print
Order consolidating cases for all purposes	18	54
Answer of United States of America—Case No. 1072	20	55
Motion of Kentucky Coal Agency, Incorporated, for leave to intervene as a defendant—Case No. 1072	24	56
Order granting motion for leave to intervene—Case No. 1072	25	57
Petition of Kentucky Coal Agency, Incorporated, for leave to intervene as a defendant—Case No. 1072	26	58
Motion of Railroad Commission of Kentucky for leave to intervene as a defendant—Case No. 1072	30	60
Order granting motion for leave to intervene—Case No. 1072	32	60
Petition of Railroad Commission of Kentucky for leave to intervene as a defendant—Case No. 1072	33	61
Motion of Kentucky Coal Agency, Incorporated, for leave to intervene as a defendant—Case No. 1076	38	63
Order granting motion for leave to intervene—Case No. 1076	39	64
Petition of Kentucky Coal Agency, Incorporated, for leave to intervene as a defendant—Case No. 1076	40	65
Motion of Raliroad Commission of Kentucky for leave to intervene as a defendant—Case No. 1076	44	67
Order granting motion for leave to intervene—Case No. 1076	46	67
Petition of Railroad Commission of Kentucky for leave to intervene as a defendant—Case No. 1076	47	68
Motion of The Alton Railroad Company (Henry A. Gardner, Trustee), et al., for leave to intervene as defendants—Case No. 1072	52	70
Motion of The Alton Railroad Company (Henry A. Gardner, Trustee), et al., for leave to intervene as defendants—Case No. 1076	54	71
Order granting motions for leave to intervene	56	72
Petition of The Alton Railroad Company (Henry A. Gardner, Trustee), et al., for leave to intervene as defendants—Case No. 1072	58	73
Petition of The Alton Railroad Company (Henry A. Gardner, Trustee), et al., for leave to intervene as defendants—Case No. 1076	61	75
Answer of United States of America—Case No. 1076	65	76
Order granting Interstate Commerce Commission leave to intervene as a defendant	68	78
Intervention of Interstate Commerce Commission—Case No. 1072	69	78
Answer of Interstate Commerce Commission—Case No. 1072	70	79
Intervention of Interstate Commerce Commission—Case No. 1076	75	82

Record from D. C. U. S., Southern District of Indiana—Continued	Original	Print
Answer of Interstate Commerce Commission—Case No. 1076	76	82
Motion of Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau for leave to intervene as parties defendant—Case No. 1072	84	87
Motion of Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau for leave to intervene as parties defendant—Case No. 1076	85	87
Petition of Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau for leave to	86	88
Order granting motions for leave to intervene	87	89
intervene as defendants—Case No. 1072		
Petition of Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau for leave to intervene as defendants—Case No. 1076	91	91
Order reassigning cases for trial to April 22, 1946	95	93
Motion of Tecumseh Coal Company, et al., for leave to intervene as defendants—Case No. 1072	97	93
Motion of Tecumseh Coal Company, et al., for leave to intervene as defendants—Case No. 1076	98	94
Order granting motions for leave to intervene	99	94
Petition of Tecumseh Coal Company, et al., for leave to intervene as defendants—Case No. 1072	100	95
Petition of Tecumseh Coal Company, et al., for leave to intervene as defendants—Case No. 1076	104	97
Answer of intervening defendants, Railroad Commission of Kentucky and Kentucky Coal Agency, Incorporated—Cases No. 1072 and 1076	109	99
Motion of Belleville Fuels, Inc., and Fifth and Ninth as parties defendant—Case No. 1072	112	100
Districts Coal Traffic Bureau for leave to intervene		
Motion of Belleville Fuels, Inc, and Fifth and Ninth Districts Coal Traffic Bureau for leave to intervene as parties defendant—Case No. 1076	113	101
Order granting motion for leave to intervene	114	101
Petition of Belleville Fuels, Inc., and Fifth and Ninth Districts Coal Traffic Bureau for leave to intervene as defendants—Case No. 1072	115	102
Petition of Belleville Fuels, Inc., and Fifth and Ninth Districts Coal Traffic Bureau for leave to intervene as defendants—Case No. 1076	118	104
Designation of Honorable J. Earl Major, U. S. Circuit Judge, to sit as District Judge—Case No. 1072	121	106
Submission for final hearing before Three-Judge Court—Consolidated cases	122	107
Findings of fact and conclusions of law	124	108
Judgment	128	111
Petition for appeal	130	112

Record from D. C. U. S., Southern District of Indiana—Continued	Original	Print
Assignment of errors	133	113
Order allowing appeal	150	119
Appeal bond—Case No. 1072 (omitted in printing)	152	
Appeal bond—Case No. 1076 (omitted in printing)	157	
Citation on appeal (omitted in printing)	162	
Notice to Attorney General of the State of Indiana	166	120
Notice of appeal	169	121
Proof of service of citation on appeal	175	122
Praecipe for transcript of record filed by appellants	202	124
Proof of service of notice of filing of praecipe for transcript of record	209	127
Praecipe designating additional portions of the record to be included in record on appeal filed by appellees, United States of America and Interstate Commerce Commission	233	130
Clerk's certificate (omitted in printing)	235	

PETITIONERS' EXHIBITS

No. 1—Proceedings before Interstate Commerce Commission in Docket Nos. 28881 and 5139	236	131
Protest of Coal Trade Association of Indiana	240	131
Order for hearing, etc., July 30, 1942, Docket No. 5139	257	141
Petition on behalf of Illinois Railroads	260	145
Order instituting investigation, Docket No. 28881	283	159
Petition of Railroad Commission of Kentucky for leave to intervene	285	161
Petition of Kentucky Coal Agency, Inc., for leave to intervene	288	163
Report and order, July 9, 1945	291	164
Orders extending effective date of order of July 9, 1945	337	223
No. 4—Transcript of hearing before Interstate Commerce Commission in Docket Nos. 28881 and 5139, March 18-25, 1943	1	226
Caption and appearances	1	226
Colloquy	8	228
Testimony of W. J. Roberfson	18	232
B. M. Hamilton	60	256
L. G. Reymiller (omitted in printing)	280	
C. J. Nelson	344	343
Exhibit No. 1—Map showing coal-producing groups in Illinois, Indiana and Western Kentucky	649a	486
Exhibit No. 2—Map showing rates from Southern Illinois Group in cents per ton of 2,000 pounds (subject to Ex parte 148 increase)	649b	486

Record from D. C. U. S., Southern District of Indiana—Continued

PETITIONER'S EXHIBITS—Continued

	Original	Print
No. 5—Transcript of hearing before Interstate Commerce Commission in Docket Nos. 28881 and 5139, June 15-24, 1943	674	487
Testimony of C. J. Nelson (resumed)	674	487
W. H. Kuhls	756	515
H. H. Washer	1058	690
J. E. Flansburg	1074	701
Carl W. Dilli	1110	720
O. E. Pearson	1130	732
S. F. Lynch	1156	749
W. J. Whalen	1200	778
C. H. Fischer	1238	802
Chas. H. Longman	1247	808
No. 6—Transcript of hearing before Interstate Commerce Commission in Docket Nos. 28881 and 5139, September 23-30, and October 1-12, 1943.	1308	824
Testimony of—		
Carl W. Dilli (recalled)	1308	825

VOL. II

Harry A. Rozene		1381	866
Harold V. Scott		1690	1059
H. F. Hoffman	(omitted in printing)	2058	
A. S. Boden	(omitted in printing)	2098	
H. F. Cholet		2128	1275
A. J. Christiansen		2174	1292
D. W. Forsberg	(omitted in printing)	2287	
J. H. Ederstrom	(omitted in printing)	2300	
B. F. Hampshire	(omitted in printing)	2312	
W. F. Neff	(omitted in printing)	2334	
D. A. Kirane	(omitted in printing)	2346	
Morton Abelson	(omitted in printing)	2361	
A. J. Christiansen (recalled)		2373	1360
Harold V. Scott (recalled)		2380	1363
A. J. Christiansen (recalled)		2398	1374
Harold V. Scott (recalled)		2464	1416
A. J. Christiansen (recalled)		2469	1418
R. H. May		2534	1454
Harry G. Nevins	(omitted in printing)	2586	
A. J. Christiansen (recalled) (omitted in printing)		2624	
Harry A. Rozene (recalled)		2631	1484
W. Y. Wildman		2756	1549
A. J. Christiansen (recalled)		2763	1554
B. M. Hamilton (recalled)		2765	1555
Walter H. Kuhls (recalled)		2804	1581
C. J. Nelson (recalled)		2830	1598

Record from D. C. U. S., Southern District of Indiana—Continued

Petitioner's Exhibits—Continued

	Original	Print
No. 8—Schedules filed with Interstate Commerce Commission	2860	1614
Supplement No. 51 to The Pennsylvania Railroad Company Local, Joint and Proportional Freight Tariff No. 60-F, I. C. C. No. 2387, said schedule having been filed July 2, 1942	2860	1614
Supplement No. 34 to The Baltimore and Ohio Railroad Company Local, Joint and Proportional Freight Tariff No. C. T. H. 423-C, I. C. C. No. WL-10705, said schedule having been filed July 2, 1942	2865	1619
Supplement No. 54 to The New York Central Railroad Company Local, Joint and Proportional Freight Tariff No. 385, I. C. C. No. 164, said schedule having been filed July 1, 1942	2869	1623
Supplement No. 56 to said I. C. C. No. 164 having been filed July 9, 1942	2873	1627
Supplement No. 10 to Illinois Central Railroad Company Local, Joint and Proportional Coal Tariff No. 3100-H, I. C. C. No. E-1802, said schedule having been filed July 1, 1942	2881	1635
Supplement No. 12 to said I. C. C. No. E-1802 having been filed July 25, 1942	2889	1643
Supplement No. 27 to Chicago, Milwaukee, St. Paul and Pacific Railroad Company Local, Joint and Proportional Freight Tariff G. F. D. No. 15200-D, I. C. C. No. B-7246, said schedule having been filed July 4, 1942	2891	1645
Supplement No. 28 to said I. C. C. No. B-7246 having been filed July 10, 1942	2894	1648
Supplement No. 20 to Chicago, Indianapolis and Louisville Railway Company Local, Joint and Proportional Freight Tariff No. 408-D, I. C. C. No. 4724, said schedule having been filed June 27, 1942	2898	1652
Supplement No. 18 to Chicago & Eastern Illinois Railroad Company Local, Joint and Proportional Freight Tariff No. 100-C, I. C. C. No. 2, said schedule having been filed June 30, 1942	2900	1654
Supplement No. 33 to Southern Railway System Joint Coal Tariff No. 809-G, I. C. C. No. C-2230, said schedule having been filed July 2, 1942	2904	1658
No. 9—Order extending effective date of orders of July 9, 1945, and November 13, 1945, by Commission	2908	1663
No. 10—Same	2909	1664
No. 11—Same	2910	1665

	Original	Print
Statement of points to be relied upon and designation of parts of record to be printed	2911	1666
Designation by appellees of additional portions of record to be printed	2924	1674
Order noting probable jurisdiction	2926a	1675
Stipulation as to printed record	2927	1675

[fol. 1] [Placita omitted]

[fol. 2-1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

No. 1072 Civil

AYRSHIRE COLLIERIES CORPORATION, a Corporation, et al.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA, Defendant

PETITION—Filed December 21, 1945

The Petitioners hereinafter named, by their attorneys, on behalf of themselves and such other parties as may have an interest herein and who may, by proper proceedings, become parties to this proceeding, bring this action to enjoin, set aside, annul or suspend, in whole or in part, an order of the Interstate Commerce Commission, dated July 9, 1945, and subsequently amended, entered in a proceeding before the Interstate Commerce Commission, entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and respectfully show unto the Court:

I

Each of the Petitioners is now, and at all times hereinafter mentioned has been, a corporation duly organized and existing under the laws of one or more of the States of the United States, or an individual, and each of them [fol. 2-2] now is and at all times hereinafter mentioned has been engaged in the operation of a coal mine or mines in the State of Indiana, except the Petitioner, Coal Trade Association of Indiana, which is a voluntary association whose members are composed of the other Petitioners hereinafter named, together with certain other persons and corporations operating coal mines in Indiana.

The addresses of your Petitioners' main offices or principal places of business and if a corporation, the name

of the State under the laws of which each Petitioner is organized, are as follows:

Ayrshire Collieries Corporation, 105 S. Meridian St., Room 430, Indianapolis, Indiana. Incorporated under the Laws of Delaware.

Big Bend Collieries, Inc., Box 293, Brazil, Indiana. Incorporated under the Laws of Indiana.

Birch Creek Coal Company, Inc., Brazil, Indiana. Incorporated under the Laws of Indiana.

Blackfoot Coal & Land Corporation, Citizens Bank Bldg., Evansville, Indiana. Incorporated under the Laws of Indiana.

Blackhawk Coal Corporation, 111 North 7th Street, Terre Haute, Indiana. Incorporated under the Laws of Indiana.

Walter Bledsoe & Company, 700 Merchants Bank Bldg., Terre Haute, Indiana. Incorporated under the Laws of Indiana.

Boonville Coal Sales Corporation, Boonville, Indiana. Incorporated under the Laws of Indiana.

Central Indiana Coal Company, Inc., 1015 Merchants Bank Bldg., Indianapolis, Indiana. Incorporated under the Laws of Indiana.

[fol. 2-3] The Enos Coal Mining Company, 1405 Merchants Bank Bldg., Indianapolis, Indiana. Incorporated under the Laws of Ohio.

Glendora Coal Company, 19 South 6th Street, Terre Haute, Indiana. Incorporated under the Laws of Indiana.

Hickory Grove Coal Mining Corporation, Merchants National Bank Bldg., Terre Haute, Indiana. Incorporated under the Laws of New York.

Ingle Coal Corporation, Elberfeld, Indiana. Incorporated under the Laws of Indiana.

Knox Consolidated Coal Corporation, 1456 Consolidated Bldg., Indianapolis, Indiana. Incorporated under the Laws of Delaware.

Linton Summit Coal Company, Inc., 19 S. 6th Street, Terre Haute, Indiana. Incorporated under the Laws of Indiana.

Little Betty Mining Corporation, 301 Merchants Bank Bldg., Terre Haute, Ind. Incorporated under the Laws of Indiana.

Mariah Hill Super Block Coal Company, Huntingburg, Indiana. Incorporated under the Laws of Delaware.

The Maumee Collieries Company, Terre Haute, Indiana. Incorporated under the Laws of Ohio.

Princeton Mining Company, 111 North 7th St., Terre Haute, Indiana. Incorporated under the Laws of Indiana.

Pyramid Coal Corporation, Terre Haute, Indiana. Incorporated under the Laws of Illinois.

Sherwood-Templeton Coal Company, 1016 Merchants Bank Bldg., Indianapolis, Ind. Incorporated under the Laws of Indiana.

Snow Hill Coal Corporation, 1318 Fletcher Trust Bldg., Indianapolis, Indiana. Incorporated under the Laws of Indiana.

[fol. 2-4] Standard Coal Company, Box 200, Vincennes, Indiana. Incorporated under the Laws of Indiana.

Paul E. Horton, doing business as Hill Coal Company, Newburgh, Indiana. A citizen and resident of the State of Indiana.

H. A. Siepman, doing business as H. A. Siepman Coal Company, Coalmont, Indiana. A citizen and resident of the State of Indiana.

Coal Trade Association of Indiana, Terre Haute, Indiana. A voluntary association.

II

This proceeding is brought for the purpose of having enjoined, set aside, amended or suspended, in whole or in part, an order of the Interstate Commerce Commission, hereinafter called the "Commission," entered July 9, 1945, in a proceeding entitled "Investigation and Suspension Docket No. 5139, *Coal to Beloit, Wis. and Northern Illinois*," which order by subsequent amendment is to become effective February 8, 1946. Said order recites, that the Commission by order dated July 30, 1942, upon complaint, entered upon a hearing concerning the lawfulness of the rates stated in the schedules described in said order and suspended such schedules; that a full investigation of the matters involved has been made, and the Commission has made and filed a report containing its findings of fact and conclusions thereon, and has found that the schedules suspended in said proceeding have not been justified because certain of the proposed rates on coal from Indiana and Western Kentucky rate groups to points in Northern Illinois and to Beloit, Wisconsin, would be unreasonable, unjustly dis-

[fol. 2-5] criminatory, or unduly prejudicial or preferential, and that certain of the present rates on coal from Indiana and Western Kentucky rate groups to points in northern Illinois and from Indiana to Beloit, Wis., are unjustly discriminatory and unduly prejudicial and preferential in and to the extent shown in the report.

The order requires the respondent carriers to cancel the proposed schedules upon not less than one day's notice in the manner prescribed in Section 6 of the Interstate Commerce Act, but without prejudice to the establishment of rates on the bases approved by the Commission in said proceeding. It further orders the respondents, according as they participate in the transportation, by tariffs filed on not less than thirty (30) days' notice, to be effective on or before November 16, 1945 (by subsequent amendment, on or before February 8, 1946), "(1) to cease and desist from practicing the unjust discrimination under section 2 of the Interstate Commerce Act and the undue prejudice and preference under section 3 (1) of said Act found in said report to exist, and (2) to publish, maintain and apply rates and charges which will avoid and remove the said unjust discrimination and undue prejudice and preference." Said order is to continue in force until the further order of the Commission.

The said proceeding was heard upon a record embracing a proceeding entitled "*Bituminous Coal Rates Within Illinois*, Interstate Commerce Commission Docket No. 28881," which was a proceeding initiated by the Commission upon its own motion, but in response to a petition filed under Section 13 of the Interstate Commerce Act by certain railroads operating in the State of Illinois, for the purpose of determining whether or not rates and charges for the intrastate transportation of coal in carloads from [fol. 2-6] Illinois mines to the same destinations in northern Illinois as those involved in the suspended schedules from Indiana caused and resulted in undue, unreasonable and unjust discrimination against interstate commerce, and undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce on the one hand and interstate commerce on the other. The report of the Commission in I. & S. Docket No. 5139 embraces its report in said Docket No. 28881.

The proceeding in I. & S. Docket No. 5139 was instituted by the filing of a complaint or protest by the Coal Trade

Association of Indiana, a voluntary association composed of the Petitioners herein, and others, who operate coal mines in the State of Indiana and whose coal is shipped by rail from such mines. Said complaint or protest prayed the suspension of the schedules of new rates filed by the railroads to become effective August 2, 1942, wherein the various railroads serving coal mines in the State of Indiana, viz., The Baltimore and Ohio Railroad Company, Chicago and Eastern Illinois Railroad Company, Chicago, Indianapolis & Louisville Railway Company (L. F. DeRamus and Holman D. Pettibone, Trustees), Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), Illinois Central Railroad Company, The New York Central Railroad Company, and Southern Railway Company, filed tariffs or schedules publishing new rates from the mines in Indiana to some seventy destinations in northern Illinois in the vicinity of Rockford, Illinois, and including Rockford, Illinois, in which said schedules the new rates were from 5 cents to 17 cents per ton higher than the rates then in effect. Said schedules also contained [fol. 2-7] new rates from certain mines in Indiana to Beloit, Wisconsin, which were 12 cents to 17 cents per ton higher than the current rates to Beloit, Wisconsin; except that the schedules filed by the Southern Railway Company contained no new rates from mines served by it in Indiana to Beloit, Wisconsin; the schedules filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company contained no new rates for the transportation of coal from mines served by it in Indiana to Beloit, Wisconsin, moving via the single line routes of said Chicago, Milwaukee, St. Paul and Pacific Railroad; and the schedules of rates from the mines on the Algers, Winslow & Western Railroad Company contained no new rates from such mines served by it to Beloit, Wisconsin.

Upon the filing of said schedules and before the same became effective, the Coal Trade Association of Indiana, on behalf of its members, Petitioners herein, filed the said complaint or protest with the Commission praying that said schedules be suspended and their effective date postponed, and that the Commission institute an investigation of the propriety and legality of the new rates contained in said schedules. Upon that protest the Commission entered its order of July 30, 1942, entering upon a hearing concern-

ing the lawfulness of said rates and suspending the operation of said schedules and postponing the effective date for the period of time permitted by the Interstate Commerce Act, and the effective date of said schedules was voluntarily postponed by respondents until the disposition of the proceeding.

The principal offices or the main business offices of the other Petitioners herein and of the Coal Trade Association of Indiana, protestant before the Commission in I. & S. Docket No. 5139, are in the State of Indiana, in the Southern District thereof.

[fol. 2-8] The venue of this suit is fixed by 28 U. S. C. A. 43 (38 Stat. 219).

Jurisdiction of this Court is invoked under the provisions of the Judicial Code, 28 U. S. C. S. 41 (8) and (28), 43, 44, 45, 45a, 46, 47, 47a and 48 (38 Stat. 219, *et seq.*), and other applicable Federal statutes.

III

Petitioners attach to this petition as Exhibits, and pray that they be considered as a part hereof, copies of the following:

Exhibit A: Protest and Request for Suspension of Proposed Rates on Bituminous Coal from Mines in Indiana to Beloit, Wisconsin, and Destinations in Northern Illinois, filed by the Coal Trade Association of Indiana on July 16, 1942.

Exhibit B: Order of the Commission, dated July 30, 1942, ordering a hearing concerning the lawfulness of the rates contained in the schedules referred to therein and suspending the operation of said schedules.

Exhibit C: Order of the Commission, dated September 9, 1942, instituting an investigation into the lawfulness of intrastate rates within Illinois under Docket No. 28881.

Exhibit D: Report of the Commission in I. & S. Docket No. 5139, Coal to Beloit, Wisconsin, and Northern Illinois, dated July 9, 1945, which report is published in 263, I. C. C. 179.

Exhibit E: Order of the Commission in I. & S. Docket No. 3139, Coal to Beloit, Wis., and Northern Illinois, dated July 9, 1945.

[fol. 2-9] Exhibit F: Petition of Coal Trade Association of Indiana, on behalf of its members, for Reopening, Rehearing, Reargument and Reconsideration, and Postponement of Effective Date of the Report and Order of the Commission, dated July 9, 1945, filed September 27, 1945.

Exhibit G: Order of the Commission dated October 5, 1945, postponing the effective date of the Order of July 9, 1945, to December 20, 1945.

Exhibit H: Order of the Commission, dated November 13, 1945, denying the petitions of the Coal Trade Association of Indiana and others for Reopening, Rehearing, Reargument and Reconsideration of the Report and Order of the Commission dated July 9, 1945, and postponing the effective date of the Order of July 9, 1945, to January 21, 1946.

Exhibit I: Order of the Commission in Docket No. 28881, dated November 13, 1945, prescribing a basis of rates within Illinois.

Exhibit J: Order of the Commission, dated December 6, 1945, postponing the effective date of the Orders in I & S. Docket No. 5139, dated July 9, 1945, and Docket No. 28881, dated December 13, 1945, to February 8, 1946.

The record before the Commission in the proceedings in I. & S. Docket No. 5139 and Docket No. 28881, which were heard together, is so voluminous that it is impracticable to attach it as an exhibit to this petition, but a certified copy of the complete transcript of record, testimony and exhibits in both of said proceedings is lodged with the Clerk herewith and is made a part hereof as if fully set forth herein.

[fol. 2-10] IV

The new schedules of rates, the suspension and investigation of which was ordered by the Commission in I. & S. Docket No. 5139, were filed by the railroads in alleged compliance with an order of the Commission in the case of *Fairbanks-Morse & Co.* v. *Alton & Southern R. Co.*, 251 I. C. C. 181. In that case the Commission on March 3, 1942, found that the rates on coal from mines in Illinois,

Indiana and Western Kentucky to Beloit, Wisconsin, were not unreasonable, but that such rates unduly preferred Rockford, Illinois, and unduly prejudiced Beloit to the extent that the rates to Beloit exceeded the rates to Rockford by more than 15 cents per ton, and ordered such prejudice and preference be removed. At the time of the entry of said order the rates from Illinois and western Kentucky mines to Beloit were 30 cents per ton more than those to Rockford, and the rates from the Indiana mines varied via the routes of different carriers from 13 cents, 18 cents and 30 cents more to Beloit than to Rockford. The new schedules filed by the carriers in alleged compliance with the said order increased the rates to Rockford 15 cents per ton, and to some seventy other destinations intermediate to Rockford in Illinois by amounts varying from 2 cents to 17 cents per ton, varying in amounts as between origins and as between carriers; and certain carriers serving mines in Indiana included in their schedules new rates to Beloit 15 cents per ton more than the new rates to Rockford. The Southern Railway Company published new rates to Rockford from origins on its line in Indiana but did not publish any new rate to Beloit, which resulted in rates to Beloit via that carrier 3 cents per ton more than the new rates to Rockford. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company [fol. 2-11] did not publish new rates to Beloit via its own line, but did publish new rates via joint line hauls 15 cents per ton over the new rates it published for joint line hauls to Rockford.

The new rates to Beloit, to Rockford and other Illinois destinations from Indiana and western Kentucky were suspended by the Commission upon complaint of the Coal Trade Association of Indiana, and the new intrastate rates to Rockford and other Illinois destinations were suspended by the Illinois Commerce Commission.

At or about the time the carriers filed their schedules of new rates, as above set forth, the principal carriers operating in Illinois filed their petition with the Commission alleging that the intrastate rates on coal within Illinois unduly preferred intrastate commerce and unduly prejudiced interstate commerce in coal. In response to that petition the Commission in Docket No. 28881 entered upon an investigation under Section 13 of the Interstate Com-

merce Act (49 U. S. C. A. 13) concerning the lawfulness of such intrastate rates on coal.

The two proceedings before the Commission and the suspension proceedings before the Illinois Commerce Commission were heard on a common record before an Examiner for the Commission and representatives of the Illinois Commerce Commission. Various parties entered appearances and participated in the proceedings including the Price Administrator and groups of coal mine operators through their respective associations. After the close of the hearings the parties filed briefs and arguments with the Commission.

The Examiner of the Commission filed a proposed report in the two cases before the Commission, to which various parties filed exceptions and replies to exceptions, and the Commission heard arguments of the interested [fol. 2-12] parties in both cases at the same time. Thereafter, on July 9, 1945, the Commission issued and filed its report which covered the two cases before it, and entered its order in I. & S. Docket No. 5139. On November 13, 1945, the Commission entered an order denying the petitions of the Coal Trade Association of Indiana, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and Rockford Chamber of Commerce, *et al.*, for rehearing, reargument and reconsideration in said I. & S. Docket No. 5139, and also entered an order in Docket No. 28881 requiring the maintenance of rates within Illinois for the transportation of coal not less than certain rates approved in said report. The Illinois Commerce Commission has made no final decision or order with respect to the intrastate rates.

V

The report and order of the Commission are illegal, arbitrary, unreasonable, beyond the power of the Commission, and therefore void, because they purport to determine the lawfulness of the present rates from Indiana to destinations in Illinois, and to require the respondents to publish and maintain rates in the future on a certain basis for the purpose of curing the alleged unlawfulness of the present rates, an issue that was not before the Commission in this proceeding.

The power and jurisdiction of the Commission to investigate new rates and suspend such rates is contained

in Section 15 (7) of the Interstate Commerce Act. (49 U. S. C. A. 15 (7).) That section provides that "Whenever there shall be filed with the Commission any schedules stating a *new* individual or joint rate * * * the Commission shall have, and it is hereby given, authority, either [fol. 2-13] upon complaint or upon its own initiative without complaint * * * to enter upon a hearing concerning the lawfulness of *such* rate * * * and after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective." (Italics supplied.) The order of the Commission, dated July 30, 1942, entered upon the complaint or protest of the Coal Trade Association of Indiana, recites that "there have been filed with the Commission tariffs containing schedules stating new individual and joint rates and charges, * * * to become effective on the 2nd of August, 1942, and later," and it ordered that the Commission, "upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in said schedules, contained in said tariffs," and "the rates, charges, regulations and practices stated in all the schedules contained in each of the * * * tariffs and supplements named in this order," and after ordering that the effective date of said schedules be postponed, the order proceeded: "*And it is further ordered*, That this proceeding be, and the same is hereby, assigned for hearing September 11, 1942, * * *."

The Commission was without jurisdiction or authority in this proceeding to enter any order or to make any findings or conclusions with respect to the present rates, as the sole issue in this proceeding was the lawfulness of the *new* rates contained in the schedules enumerated in the Commission's order of July 30, 1942. Further, the only rates involved in the notice of hearing contained in such order were the new rates; there was no hearing or notice of hearing or order for a hearing with respect to the lawfulness of the present rates.

[fol. 2-14] The action of the Commission in making findings of fact and conclusions and entering an order with respect to the present rates which were not before it, and were not at issue in the proceedings, was arbitrary and beyond its power and authority and therefore void.

VI

The order of the Commission, in so far as it would require respondents to remove the alleged discrimination and undue prejudice and preference in the present or proposed rates from the Indiana groups to destinations in northern Illinois, is illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, because there was no evidence in the record with respect to such rates, other than the fact of the measure of such rates and the distances over which such rates applied to various destinations.

1. The evidence shows that since 1934 the Milwaukee Railroad has maintained rates from mines served by it in the Brazil-Clinton and Linton-Sullivan groups to Rockford, Freeport and certain other destinations on its line in Illinois which, while less than the rates charged by other carriers in said groups to Rockford, Freeport and some of the destinations on the line of the Milwaukee, were for different length hauls; that the lesser rates applied for the single line hauls via the Milwaukee while the higher rates applied on joint line hauls via other carriers, and some via other carriers and the Milwaukee. The proposed rates continued that relationship.

2. There was no evidence that any person shipping from a point on the Milwaukee in either group served by it in Indiana to any destination on its line in Illinois for trans- [fol. 2-15] portation via its single line was charged, or would be charged, any greater or less rate than the published charge of the Milwaukee for such service or that any rebate, drawback or other form of credit was given, or would be given to any shipper on such route.

3. There was no evidence that the service via the direct line of the Milwaukee was like, or would be like, the contemporaneous service from mines on the lines of other carriers or from mines on the Milwaukee via other routes, or that the service of the Milwaukee via its direct line was or would be performed under substantially similar conditions as the joint line transportation from other mines in said groups.

4. There was no evidence that any particular person, company, firm, corporation, association, locality, district

or any particular description of traffic was or would be accorded any undue or unreasonable preference or advantage by reason of the present or proposed single line rates of the Milwaukee from the Brazil-Clinton and Linton-Sullivan groups in Indiana to Rockford, Freeport and other destinations on its line in Illinois, or that any particular person, company, firm, corporation, association, locality, district, territory or particular description of traffic was or would be subjected to any undue or unreasonable prejudice or disadvantage by reason thereof.

5. There was no evidence that any mine in Indiana would have shipped or would in the future be able to ship more coal to Rockford, Freeport or any other destination on the line of the Milwaukee in Illinois to which said present or proposed single line rates from Brazil-Clinton and Linton-Sullivan groups apply or would apply if the rates of the Milwaukee were the same as or higher than the rates [fol. 2-16] of the other carriers serving mines in said groups.

6. There was no evidence that any person, firm, company, corporation or locality in Illinois at which coal is used and consumed, was or would be prejudiced or preferred by reason of the present or proposed single line rates of the Milwaukee from the Brazil-Clinton and Linton-Sullivan groups being on a lower basis than the present or proposed joint line rates from mines in those groups.

7. There was no evidence that the present or proposed single line rates of the Milwaukee from mines on its lines in Brazil-Clinton and Linton-Sullivan, Indiana, to Rockford, Freeport and other points on its line in Illinois unduly preferred or would unduly prefer the shippers on that line or unduly prejudice or would unduly prejudice the shippers from any of the mines in the other two groups in Indiana or any shippers of coal from groups in Illinois.

8. No party to this proceeding claimed or asserted in any evidence or in any brief or argument filed with or made to the Commission in I. & S. Docket No. 5139 that the present or proposed single line rates of the Milwaukee unduly preferred or would unduly prefer shippers of coal served by the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups in the shipment of coal from such origins to Rockford, Freeport and other destinations on

the line of the Milwaukee in Illinois, and no one claimed to be injured or hurt thereby, or that any one would be injured or hurt by the present or proposed single line rate of the Milwaukee.

9. All of the above statements with respect to the present and proposed single line rates of the Milwaukee from mines served by it in the Brazil-Clinton and Linton-Sulli- [fol. 2-17] van groups in Indiana to Rockford, Freeport and intermediate destinations on its line in Illinois, are true with respect to the present and proposed single line rates of the Illinois Central published from origins served by it in the Linton-Sullivan group to Rockford, Freeport and other destinations on the line of the Illinois Central in Illinois, which are lower than the present and proposed rates from other mines in the said Linton-Sullivan group to such destinations.

10. There was no evidence in this record that the Milwaukee in any way controlled the present or proposed rates published by other carriers serving mines in the Brazil-Clinton and Linton-Sullivan groups in Indiana to Rockford, Freeport or other destinations on the line of the Milwaukee in Illinois, to which the Milwaukee published lower rates via its single line than the rates from origins on such other carriers, nor was there any evidence that the Illinois Central had any control over the rates from any mines served by other carriers in the Linton-Sullivan group to Rockford, Freeport and other destinations in Illinois on the line of the Illinois Central, to which the lower present and proposed single line rates of the Illinois Central apply.

11. There was no evidence on the question of what is or would be a reasonable minimum rate for the service of transporting coal via the single line of the Milwaukee from the Brazil-Clinton and Linton-Sullivan groups in Indiana to Rockford, Freeport and other destinations on its line in Illinois, nor what is or would be a reasonable minimum rate for the service of the Illinois Central for transporting coal from mines on its line in Linton-Sullivan to Rockford, Freeport and other destinations on its line in Illinois.

[fol. 2-18]

VII

The report and order of the Commission are illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, because they purport to deter-

mine the lawfulness of the present rates from mines in Indiana to Beloit, Wisconsin, and to require the publication and maintenance of rates from mines in Indiana to Beloit on a new basis for the purpose of curing unjust discrimination under Section 2 of the Interstate Commerce Act and undue prejudice and preference under Section 3 (1) of said Act, found in said report to exist, an issue which was not before the Commission in this proceeding.

1. The Milwaukee did not file any new schedule of rates via its single line from origins on that line in the Brazil-Clinton and Linton-Sullivan groups to Beloit. The Southern Railway did not file any schedule of new rates from mines on its line in the Princeton-Ayrshire and Booyville groups to Beloit; nor was there filed any schedule of new rates from mines on the lines of the Algers, Winslow & Western Railway in the Princeton-Ayrshire group to Beloit.

2. The finding and conclusion are that there is unjust discrimination and undue preference and prejudice in the present rates from Indiana to Beloit to the extent that such rates differ from the approved rates in Appendices A and D of the report. That schedule of approved rates sets forth relationships as between the groups in Indiana and as between the Indiana groups and the groups in Illinois which differ materially from the present relationship in those rates. The order purports to require the respondents to change the existing relationship of the present rates.

[fol. 2-19] 3. The power and jurisdiction of the Commission to investigate new rates and to suspend such rates, as provided in Section 15 (7) of the Interstate Commerce Act, (49 U. S. C. A. 15 (7)), limits the Commission to action regarding the new rates, and it can not act with respect to the present rates.

4. The present rates of the Milwaukee via its single line haul to Beloit and the rates of the Southern Railway from mines on its line in Indiana and the rates from mines on the line of the Algers, Winslow & Western Railway to Beloit, were not included in the order of July 30, 1942, ordering the investigation in I. & S. Docket No. 5139, and no hearing was entered upon regarding the lawfulness of those present rates to Beloit. The Com-

mission was without jurisdiction or authority in this proceeding to enter any order or to make any findings or conclusions with respect to the present rates of the Milwaukee, the Southern Railway or the Algers, Winslow & Western Railway, or other respondents to Beloit as the sole issue in this proceeding was the lawfulness of the new rates contained in the schedules enumerated in the Commission's order of July 30, 1942. There was no order for, or notice of hearing in this proceeding with respect to the lawfulness of the present rates, and there was no hearing regarding the lawfulness of the present rates.

5. No action taken by the Milwaukee or the Southern Railway or by the Algers, Winslow & Western Railway respecting rates from mines on their lines caused or tended to cause any change in the relation of the rates to Beloit. Any disruption of the present adjustment at Beloit was caused by the action of other carriers in publishing rates to Beloit higher than their present rates. It is beyond the power of the Commission in this pro- [fol. 2-20] ceeding to require the Milwaukee, the Southern Railway or the Algers, Winslow & Western Railway to take any action to correct any unlawfulness in the rates which is caused by the action of other carriers.

6. In its report the Commission states (263 I.C.C. 179, 202): "To Beloit, the relative situation as a whole differs from that to northern Illinois * * * in that the rates to that point from Illinois groups, from Brazil and Linton mines on the Milwaukee, from Princeton mines on the Southern and the Algers, Winslow & Western, and from Boonville are not here proposed to be changed and therefore are not specifically in issue in this proceeding." The action of the Commission in making findings of fact and conclusions and entering an order with respect to the rates of the three carriers above named to Beloit or with respect to the present rates of all carriers from Indiana to Beloit, which rates were not before it and not in issue in the proceeding, was arbitrary and beyond the power and authority of the Commission and therefore void.

VIII

The order of the Commission in so far as it would require respondents to remove the alleged discrimination under Section 2 of the Interstate Commerce Act, and the

alleged undue prejudice and preference under Section 3(1), in the single line rates from mines served by the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups to Beloit, and the rates of the Southern Railway from mines served by it in the Princeton-Ayrshire and Boonville groups and the rates from the mines served by the Algers, Winslow & Western Railway in the Princeton-Ayrshire group to Beloit, is illegal, arbitrary, unreasonable and beyond the power of [fol. 2-21] the Commission, and therefore void, because there is no evidence in the record with respect to such rates, other than the fact of the rates from all groups or origin groups to Beloit, the proposed new rates of some of the respondents from origins in Indiana, and the distances of the hauls over which such rates applied from the various origin groups to Beloit.

1. The evidence shows that for many years the rates to Beloit from all the mines in the Brazil-Clinton group were the same; that the rates from all mines in the Linton-Sullivan group were the same; that the rates from all mines in the Princeton-Ayrshire group were the same; and the rates from all mines in the Boonville group were the same; that those rates were respectively 30, 20, 13 and 10 cents under the rates from southern Illinois to Beloit, and that such relationship had been approved by the Commission in *Illinois Coal Traffic Bureau* v. *Ahnapee & Western Railway Co.*, 204 I.C.C. 225.

2. There is no evidence in the record that any person shipping coal from origin points on the Milwaukee in the Brazil-Clinton or Linton-Sullivan groups for transportation to Beloit via the single line of the Milwaukee was or would be charged any greater or less rate than that published by the Milwaukee for such service, nor is there any evidence that any rebate, drawback or other form of credit was given or would be given to any shipper via such route.

3. There is no evidence that the continued maintenance of the present rate of the Milwaukee via its single line route to Beloit would result in collecting or receiving from any person or persons a greater or less compensation for the service rendered via the Milwaukee over its single line route, or to be rendered than it will charge [fol. 2-22] or has charged, demanded or collected or received from any other person for rendering to him or them

a like and contemporaneous service in the transportation of coal from origins in the Brazil-Clinton or Linton-Sullivan districts under substantially similar circumstances and conditions.

4. There is no evidence in the record that the service of transporting coal from origins on the Milwaukee Railroad from the Brazil-Clinton and Linton-Sullivan districts to Beloit via its single line route is or would be like the contemporaneous service from mines on the lines of other carriers serving mines in said groups, or from origins on the Milwaukee in such groups via joint line routes; nor is there any evidence that the service of the Milwaukee via its single line route is or will be performed under substantially similar conditions as the joint line service now performed or to be performed by other carriers serving mines in said groups, or joint line service from mines served by the Milwaukee in such groups.

5. There is no evidence in the record that any particular person, company, firm, corporation, association, locality, district or any particular description of traffic is being or will be accorded any undue or unreasonable preference or advantage by reason of the maintenance of the single line rates of the Milwaukee from origins on its line in the Brazil-Clinton and Linton-Sullivan groups to Beloit; nor is there any evidence that any particular person, company, firm, corporation, association, locality, district, territory or particular description of traffic is being or will be subjected to any undue or unreasonable prejudice or disadvantage by reason thereof.

6. There is no evidence that any mine in the Brazil-Clinton or Linton-Sullivan groups would expect to ship [fol. 2-23] any more coal to Beloit if the rates of the Milwaukee for its single line service from mines in Brazil-Clinton and Linton-Sullivan to Beloit were made the same as the rates from other mines in Brazil-Clinton and Linton-Sullivan to Beloit in the new schedules under suspension in this proceeding, so long as the rates from the Illinois origin groups remain as they are.

7. There is no evidence that any person, firm, company, corporation or locality in Beloit is now being or will be unduly or unreasonably prejudiced or preferred

by reason of the single line rates of the Milwaukee from Brazil-Clinton and Linton-Sullivan to Beloit over its single line haul, or by reason of the present rates from any Indiana group to Beloit.

8. There is no evidence that the present rates of the Southern Railway from the Princeton-Ayrshire and Boonville groups, or the rates from the mines on the Algers, Winslow & Western Railway to Beloit do or will subject any person, firm, company or corporation to any undue preference or disadvantage or that such rates do or will result in any undue prejudice to any shipper of coal on the lines of said railroads in Indiana.

9. There is no evidence in the record that the Milwaukee or the Southern Railway or the Algers, Winslow & Western Railway in any way control the rates published by other carriers serving mines in Indiana to Beloit, or that the Milwaukee in any way controls the rates published by the Southern Railway. There is no finding that the Milwaukee exercises any control over or has any control over the rates published by other carriers serving mines in Indiana, nor is there any such finding with respect to either the Southern Railway or the Algers, Winslow & Western Railway.

10. There is no evidence in the record and no finding of [fol. 2-24] fact on the question of what is or would be a reasonable minimum rate for the service of transporting coal via the single line of the Milwaukee from origins in the Brazil-Clinton and Linton-Sullivan groups to Beloit, nor is there any such evidence with respect to what is or would be a reasonable minimum rate for the service of transporting coal from the Princeton-Ayrshire and Boonville groups to Beloit, or from mines served by the A. W. & W. Railway in the Princeton-Ayrshire group to Beloit, or with respect to a reasonable minimum rate from any mine, origin or origin group in Indiana to Beloit.

11. The order of the Commission in so far as it requires the respondents to cease and desist from practicing the alleged unjust discrimination under Section 2 of the Act and the alleged undue prejudice and preference under Section 3 (1) of the Act, found in the report to exist, and to publish and maintain and apply rates and charges that will avoid and remove said unjust discrimination and undue prejudice and preference with respect to the rates to

Beloit, is illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, because there is no evidence in the record regarding the rates to Beloit to support the findings and conclusions in the report upon which said order is predicated, or to support such order.

IX

The report and order of the Commission are illegal, arbitrary, capricious, inconsistent and unreasonable, and therefore void, because the report makes statements of alleged fact and purported findings of fact which are contradictory and which are not supported by the evidence. [fol. 2-25] Some of such statements of purported fact and purported findings of fact are as follows:

1. The statement in the report (263 I.C.C. 179, 181) that:

> "Because of these reductions (the intrastate reductions made in 1930) the interstate rates from Indiana and western Kentucky to Rockford and other northern Illinois points were likewise reduced."

is erroneous because contrary to the facts established by uncontradicted evidence showing there was no reduction in the rates from Indiana to Rockford and other northern Illinois points. When the Milwaukee in 1932 reduced its rates to meet the reductions made in the Illinois intrastate rates there were no other reductions in the rates from Indiana.

2. Referring to the standard differential as between the Indiana groups and the Illinois groups, restoration of which was sought by the Indiana interests, it is said (263 I.C.C. 179, 184):

> "Such restoration would have been largely accomplished under the proposed adjustment as approved by us in *Coal to Illinois and Wiscosin, supra*, except from the Princeton and Boonville groups."

The proposed adjustment involved in that decision would not have restored the standard differential relationship except from the Brazil-Clinton and Linton-Sullivan districts, but the rates approved by the Commission in that case would have restored that standard differential re-

lationship from all of the Indiana groups. This fact is shown in Appendix A to the report in this proceeding, which shows the rates approved from Indiana to the Illinois destinations and the rates approved to Beloit from both Illinois and Indiana groups. The report in that case shows that the rates approved from Indiana, together with the intrastate rates proposed in Illinois, would have largely [fol. 2-26] restored the standard differentials to northern Illinois destinations.

3. The statement in the report (263 I.C.C. 179) that:

> "The record is convincing that once this dual basis becomes effective at Beloit, it will quite certainly spread to other points in Wisconsin served by the Milwaukee, of which there are many."

is not supported by any evidence in the record. It is contrary to the record and to other statements in the report which show that to all destinations in southern Wisconsin the rates from the Indiana and Illinois mines are on the basis of the standard differential, and that such rates have been approved by the Commission in its decision in *Illinois Coal Traffic Bureau* v. *A. & W. Ry. Co.*, 204 I.C.C. 225. There is no evidence of any intention, present or future, of changing any rates to any other destination in Wisconsin.

4. The puported finding of fact No. 10 (263 I.C.C. 179, 192) that:

> "The proposed adjustment would continue the present maladjustments and inconsistencies, and would extend them also to Beloit and to the Princeton group, thus laying the foundation for a further spread of the dual-rate basis to numerous additional points in Wisconsin."

is not supported by any evidence in the record of any intended or contemplated changes in rates to any points in Wisconsin. On the contrary, the evidence shows that the Commission has approved the present basis to Beloit and to other points in Wisconsin, and that the changes proposed in the relationship of rates to Beloit were made by the carriers in an effort to comply with the Commission's order in the case of *Fairbanks-Morse & Co.* v. *Alton & S. R. Co.*, 251 I.C.C. 181.

[fol. 2-27] 5. The statement (263 I. C. C. 179, 194) that:

> "It seems plain, however, that the attitude of both the Southern and of the Illinois Central in this respect is motivated largely by the relatively low rates from the Brazil and Linton groups maintained or herein proposed by the Milwaukee."

is erroneous because there is no evidence in the record as to what motivated the Illinois Central in maintaining its present rates or in proposing its new rates to Rockford, other than attempting to comply with the order in the *Fairbanks-Morse & Co.* case. The Illinois Central proposed rates to Beloit 15 cents per ton higher than the proposed joint-line rates to Rockford. No representative of the Illinois Central testified on the subject. Representatives of the Southern testified that they maintained the present rates to Beloit so that mines on the Southern in Indiana would be in a position to compete with Illinois coal. The statement that the rates of the Milwaukee are relatively low is not supported by the evidence.

6. The statement (263 I. C. C. 179, 195) that:

> "The transportation conditions over the single-line routes of the Milwaukee and the Illinois Central do not differ materially from those over the joint-line routes * * * from other mines in the same group * * *."

is not supported by any evidence in the record. There is no evidence in this record by which the transportation conditions over the single-line routes of the Milwaukee and the Illinois Central from Brazil-Clinton or Linton-Sullivan can be compared with transportation conditions over the joint-line routes from other mines in those groups to the same destinations.

7. The statement (263 I. C. C. 179, 195) that:

> "The situation presented is in principle similar to that before us in *Fairbanks-Morse & Co.* v. *Alton S. R. Co.*, *supra*, pages 201-06, wherein we found that [fol. 2-28] the maintenance of higher rates from 6 mines in the southern Illinois district to Janesville and Clinton Junction, Wis., was unduly prejudicial and

> preferential to the extent that they exceeded the contemporaneous rates to the same destinations from the other mines in the same district."

is erroneous because there is no evidence of record in this case regarding any of the elements necessary to sustain a finding of unjust discrimination under Section 2 of the Act, or undue preference or prejudice under Section 3 of the Act, whereas the facts recited in the decision in the *Fairbanks-Morse & Co.* case referred to in the report show the essential facts of such preference and prejudice.

8. The statement (263 I. C. C. 179, 196) that:

> "Differences in competitive conditions, where they exist, reflect themselves largely in the statistics of production and tonnage moved from the respective groups, * * *"

is erroneous because there is no evidence of record to support that statement. Many factors, such as exhaustion of mines, opening of new mines, and extension of group boundaries affect reported production and shipment from a given group.

9. Purported finding No. 1 is erroneous where it states (263 I. C. C. 179, 213):

> "In *Intrastate Rates on Bituminous Coal in Illinois, supra*, we declined to require increases in the relatively low intrastate rates from the southern Illinois group to Rockford, Freeport, and Dixon unless and until the rates on like traffic from the Indiana groups to the same destinations were increased more nearly to the basis of other interstate rates in the same territory."

As shown by the report of the Commission in *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, the Commission based its decision on a comparison of dis- [fol. 2-29] tances from the southern Illinois and Brazil-Clinton groups to Rockford and Dixon, comparing the short line distance from southern Illinois with the average distance from all mines in the Brazil-Clinton group, and determined the percentages of the rates and distances so compared under a mileage scale of rates; no reference

was made in that case to the other interstate rates in the same territory. If the Commission in that case had compared like with like, *i. e.*, the average distance from all mines in the southern Illinois group with the average distance from all the mines in the Brazil-Clinton group, the comparison would have shown the Indiana rates on a higher level than the Illinois rates; or if it had compared the short rate making line distance from the Indiana group with the short rate making line distance from southern Illinois, such comparison would also have shown the Indiana rates to be on a higher level than the Illinois rates. That fact was pointed out in the evidence in this proceeding and not contradicted.

10. Finding No. 3 of the report (263 I. C. C. 179, 213) is erroneous because it assumes a non-existent fact in stating that:

> "The Milwaukee * * * instead of joining with the other Indiana carriers in an effort to increase the rates from Indiana * * * reduced its single-line rates * * *."

There is no evidence of any effort on the part of other Indiana carriers to increase rates from Indiana after the decision in *Intrastate Rates on Bituminous Coal in Illinois*, *supra*. The finding assumes that other carriers were thwarted in such an effort to increase the Indiana rates by the action of the Milwaukee.

The further statement in said finding that:

> "This resulted in a dual basis of rates from the [fol. 2-30] Brazil and Linton districts, that is, lower rates from mines on the Milwaukee than from mines on the other carriers serving those respective districts to the same destinations."

is misleading, inaccurate and not based on evidence. It is true that the rates of the Milwaukee were lower than those of other carriers serving the Brazil and Linton districts, but it is not true that the rates published in 1932 by the Milwaukee created a dual basis. There were then, as there are today, different rates published by different carriers from the same groups to some of the same destinations. There is no evidence in this record that in 1932 the rates from all mines in the Brazil dis-

trict were the same to each destination in northern Illinois. The report in *Coal from Indiana to Illinois*, 197 I. C. C. 245, shows that the rates to some destinations were not uniform from those groups.

The statement in said finding that the "Respondents now propose to extend the dual basis of rates so it would apply also from the Indiana groups to Beloit", is misleading. The so-called dual basis of rates now applies at Beloit from the Belleville and Centralia groups in Illinois. The dual basis of rates at Beloit from the Indiana groups would result not from any change in the rates proposed by the Milwaukee or the Southern, but because other carriers serving Indiana mines propose to increase their rates to Beloit to a level higher than the rates from Illinois to Beloit.

11. Finding No. 4 (263 I. C. C. 179, 214) contains statements of generalities which do not apply and are not correct. To say that:

> "The average distances over the single-line routes of the Milwaukee * * * are approximately the same as, and in some instances less than, those over the joint-line routes from the same origin districts to the same destinations * * *."

[fol. 2-31] is improper because they are not the same in any instance and in most instances are less than the distances from other mines via joint-line routes. For example, to Byron, the distance via the Milwaukee from Brazil-Clinton is 234.4 miles; from mines on the New York Central and the Pennsylvania, the distances are 282 and 319 miles, respectively; from miles on the C. E. & I. and the B. & O. the distances are 240 and 242 miles, respectively. The average from mines other than the Milwaukee is 255.6 miles. There are three rates applying from Brazil-Clinton to Byron.

The statement in said finding No. 4 that:

> "In general, all of the mines in these districts produce coal of the same quality and grade * * *"

is erroneous. There is no evidence in the record to support that statement. It is contrary to the actual facts. If the Commission considered the competitive situation important, it should have reopened this case to permit evidence

of the competitive situation that actually exists and of the qualities of the coals produced in the various districts.

12. Finding No. 5 (263 I. C. C. 179, 214) is erroneous because it is partially true and partially false. It is true with respect to destinations to which the Milwaukee and the Illinois Central publish single-line rates which are lower than the rates published by other carriers in the Brazil-Clinton and Linton-Sullivan groups, but it is untrue as to destinations to which the Milwaukee and the Illinois Central publish rates which are on the same level as the predominant rates from the Brazil-Clinton and Linton-Sullivan groups to such destinations. It is inconsistent with other findings and conclusions in the report in stating that the differentials as between the single-line rates of [fol. 2-32] the Milwaukee from Brazil-Clinton and Linton-Sullivan and the joint-line rates from Princeton and Boonville "are greater than are warranted by the respective differences in distance". For example, the Milwaukee distance from Linton to Rockford is 273 miles; the distance from the Algers, Winslow & Western mines in Princeton-Ayrshire, via routes in which the Milwaukee participates, is 371 miles, a difference of 98 miles, and the difference in rates is 19 cents. As between Springfield and southern Illinois to Rockford, the differential is 30 cents for a difference in distance of 106 miles, which differential is approved in this report and has existed for years.

The distance via routes in which the Milwaukee joins from Princeton to Rockford is 84 miles longer than the Milwaukee's single line route from Linton. As between the Danville and the DuQuoin groups in Illinois, the difference in distance is 86 miles, and the difference in rate approved in the report in Appendix D is 19 cents.

13. Finding No. 6 (263 I. C. C. 179, 215) is erroneous because it is a mixed finding of fact and conclusion of law. As a statement of fact it is erroneous because, in stating the distance via certain lines approximates the average distance from the group as a whole, such average distance includes the line having the longer haul and higher rate. Proper comparison should be made of the line having the longer haul with the average of other lines serving the district. From Princeton-Ayrshire to Rockford the rate of

the B. & O. is $2.14 for a haul of 405 miles; the average of the group is 371 miles. Three lines have a rate of $2.09 for an average haul of 364 miles. The carrier with a haul of 371 miles charges $2.27, and the B. & O., with a haul of 465 miles, charges $2.14. It is erroneous as a con- [fol. 2-33] clusion of law, because it would deprive the carriers from initiating and maintaining rates within the zone of reasonableness of minima and maxima that do not violate the provisions of the Act.

The part of the finding, "In the absence of any justification therefor, the rates from such mines should not exceed those herein approved from the respective districts of which they are a part," is erroneous because nowhere in the report or findings is there any indication of what such justification might be.

Said finding No. 6 is inconsistent, arbitrary and capricious in that it requires carriers which publish rates higher than other carriers serving a group to reduce such rates to the rates of such other carriers, but permits carriers which do not publish any specific rate from a group to a destination to continue to omit publication of a specific rate.

14. Finding No. 9 (263 I. C. C. 179, 215) is erroneous in that it is not based upon evidence of record and is not a finding of fact. It deals with a subject matter upon which there was no hearing or order for hearing. It is erroneous as a conclusion of law because it would deprive carriers of their right to initiate and maintain rates within the zone of reasonableness, minima and maxima, so long as such rates are not otherwise in violation of the Act. Further, it is erroneous as a conclusion of law because it would enable carriers serving a majority of origins in a group to impose their rates upon other carriers serving origins in the same group.

15. Finding No. 11 (263 I. C. C. 179, 215) is erroneous, is not supported by, but is contrary to the evidence with respect to the rates to Rockford, Freeport, DeKalb, Belvidere, Geneva and many other destinations in Illinois. It is true with respect to the rates to Sterling, Forreston and [fol. 2-34] Rochelle, Illinois, and other points in northern Illinois west of Rockford.

16. Finding No. 12 (263 I. C. C. 179, 215) is erroneous because it is not based on evidence, as the action of the

carriers in filing the new schedules which were suspended shows there was agreement between them to maintain the present relationship in the rates from Illinois and Indiana to Illinois destinations. The conclusion of law in said finding No. 12 that:

> "the record in these proceedings being adequate for the purpose, it is incumbent upon us to determine, and if need be prescribe, such an adjustment."

is erroneous and contrary to fact, in that the Commission had no jurisdiction or power in this proceeding to pass upon the present rates or rate relationships, and there is no evidence to support it in prescribing such adjustment.

17. Finding No. 13 (267 I. C. C. 179, 216) is erroneous in that so far as it purports to state facts, such statements are contrary to and are not supported by the evidence. There is no evidence of difference in distance of the haul between any one mine in Boonville and any one or more mines in the Princeton-Ayrshire group to any one destination. The evidence shows that from mines served by the Southern Railway in Princeton and mines served by that carrier in Boonville, the difference in distance ranges from 46 miles to 76 miles. Appendix D to the report shows that the average difference in distance between all mines in the Boonville group and all mines in the Princeton group is 34 miles.

The conclusion of said finding that:

> "Accordingly, the rates from the Boonville mines to these destinations should not exceed those from the Princeton district to the same destinations"

is erroneous, inconsistent, arbitrary and capricious, in that [fol. 2-35] in this proceeding the Commission has found and required that the difference in rates between the Brazil-Clinton and Linton-Sullivan groups, for an average difference in distance to the twelve representative points in Illinois of 37 miles, be not less than 10 cents, but would require an equality of rates between Princeton-Ayrshire and Boonville for an average difference in distance between the two groups of 34 miles.

18. Finding No. 17 (263 I. C. C. 179, 216) is not supported by, but is contrary to, the evidence in so far as it states:

> "* * * as an indirect result thereof (allegedly low rates in Illinois) by reason of the relatively low level of the interstate rates from Indiana to the same northern Illinois destinations, which are held down by the intrastate rates referred to, respondents are suffering an additional loss of revenue of not less than $50,000 per annum."

The evidence shows, and the Appendices to the report show, that to many of the destinations the present rates from Indiana are on a higher level than the present rates from Illinois to the same destinations. The conclusion in said finding that:

> "Under the rate adjustment herein approved * * * respondents' annual revenues may reasonably be expected to be increased by at least the foregoing amounts,"

is an erroneous and misleading statement, because while the revenues of some of the respondents would be increased, the revenues of others would be reduced. By depriving Indiana mines of an ability to make any shipments to the territory, the carriers serving those mines would lose not only the revenue covered by the increases in rates, but would lose the revenue from the present rates; the revenues [fol. 2-36] of the carriers serving Illinois mines would be increased not only by the amount of the increased rates on the tonnage now moving from Illinois, but also by the revenue presently derived by the carriers serving Indiana under the present rates.

19. Finding No. 19 (263 I. C. C. 179, 217) is contrary to the evidence in so far as it includes the interstate rates from Indiana in its content. None of the present inconsistencies are removed as between the rates from Illinois and those from Indiana; new inconsistencies are added by the approved rates.

X

The report and order of the Commission are illegal, arbitrary, unreasonable, inconsistent, capricious, beyond the power of the Commission, and therefore void, because:

1. The report and order purport to apply to all rates from all the Indiana groups, and the relation of the rates from those groups to the rates from all the Illinois groups, other than the northern Illinois group, to the destinations involved. The Commission has only considered and acted upon the rates and distances via one of the several carriers serving the same origin points. Few origin points in Indiana are served by more than one carrier, while numerous origin points in Illinois are served by two, three or four carriers. The average distances from Illinois origin groups shown in the report do not represent the minimum service performed by all the carriers, but only the service of the carrier having the shortest haul; there is no evidence that such carrier hauls any part of the traffic from any of the origin *hauls any part of the traffic from any of the origin* points served by two or more carriers.

[fol. 2-37] 2. There is no evidence showing the average distance from Linton-Sullivan to Rockford to be 300 miles, as stated in the report; the average shortest tariff route distance of 292 miles shown in evidence is wrong because it uses the haul via the Illinois Central's single line instead of the short tariff route distance from mines on the Illinois Central, the difference between the two routes is 37 miles.

3. The report, and Appendices A and D thereto, are arbitrary and inconsistent in that in dealing with average distances from the Indiana groups the distances via all carriers serving such groups are used, whether or not such carriers publish higher rates than the general rate applying from the group, and in many instances whether or not some of the carriers publish any specific rates from the group; while from the Illinois groups the Commission omitted distances via a carrier publishing higher than the general rate in some cases and in other cases included such distances, where to do so would reduce the average distance from the Illinois group. For example, the report states the average shortest tariff route distance from the Belleville group to Beloit to be 358 miles; no such distance

is shown in the evidence; it is arrived at by including the shorter distances via a route having a higher rate from certain mines in the Belleville group. From the Centralia group, the distance to Beloit is shown in the report as 283 miles; no evidence shows such distance; it is arrived at by omitting the distance via the line of a carrier serving mines in Centralia at a higher rate than the general Centralia rate to Beloit. From Princeton-Ayrshire, the average distance to Rockford shown in the report includes the distances from mines served by the B. & O. and mines served by the A. W. & W., which publish rates higher than [fol. 2-38] the general rate from Princeton-Ayrshire to Rockford. In determining average distances from Illinois groups, from which some carriers do not publish specific rates to some destinations, no distance via such carrier was considered, but from the Indiana groups many distances via routes over which no specific rates are published are included in the average distance from the groups.

4. The report states that the rates from Indiana and the intrastate rates within Illinois to these northern Illinois destinations should be on the *same* level; the report approves rates from Indiana on a *higher* level than the rates from Illinois to the same destination, a few examples of which, shown in Appendix A, are as follows:

A. To Rockford, Illinois, from Brazil-Clinton group, Indiana, distance 251 miles, rate $2.07; from Springfield group, Illinois, distance 257 miles, rate $1.95; from Linton-Sullivan group, Indiana, distance 300 miles (should be 290), rate $2.17; from Centralia, Belleville, and DuQuoin groups, Illinois, distances 316, 332 and 304 miles, respectively, rate $2.15.

B. To Geneva, Illinois, from Brazil-Clinton, distance 217 miles, rate $1.84; from Springfield, distance 230 miles, rate $1.75; from Linton-Sullivan, distance 249 miles, rate $1.94; from Belleville, distance 353 miles, rate $1.95; from Princeton-Ayrshire, distance 313 miles, rate $2.01; from southern Illinois, distance 382 miles, rate $2.05.

C. To Beloit, Wisconsin, from Brazil-Clinton, distance 269 miles, rate $2.22; from Springfield, distance 276 miles, rate $2.10; from Linton-Sullivan, distance 302 miles, rate $2.32; from Belleville, distance 358 miles (should be 380 miles), rate $2.30.

[fol. 2-39] 5. The report approves and the order requires the publication and maintenance of rates from Indiana to destinations in northern Illinois on the basis of the rates described in the report. Nowhere in the report is there any discussion of any of such rates, nor is there any statement of fact or any consideration given to the rates to any of the twelve so-called representative points in northern Illinois from any of the groups. Individual rates are approved to each of the twelve points from each of the Illinois and Indiana groups, but there are different relationships as between the Indiana groups on the one hand and the Illinois groups on the other at the various destination points. For example, to Belvidere, Illinois, the rates from Brazil-Clinton are 18 cents under those from southern Illinois for a difference in distance of 170 miles; at Sterling, Illinois, 16 cents under for a difference in distance of 42 miles; at Geneva, Illinois, 21 cents under for a difference in distance of 165 miles; at Forreston, Illinois, 25 cents under for a difference in distance of 83 miles; at Rochelle, Illinois, 16 cents under for a difference in distance of 100 miles; and at Ambo, Illinois, 16 cents under for a difference in distance of 67 miles.

6. Appendix D purports to show the average distance and average rate from each of the groups in Illinois to all of the twelve destinations. The only discussion of the relationships to these Illinois points is a discussion of the average distance and average rate from one group to all of the points, as compared with the average distance and average rate from another group to all of the points; and of the average rate and average from all groups in Indiana and all groups in Illinois to all said destinations. There is no discussion and there is no finding that the rates to [fol. 2-40] any individual destination are just, reasonable and non-discriminatory, except the conclusion made a part of finding No. 19 that "the approved rates * * * * result in a reasonable, non-discriminatory and non-prejudicial adjustment both on interstate traffic and as between such traffic on the one hand, and Illinois intrastate traffic on the other." Even to Rockford, which was stated in the evidence to be the key point in the Illinois destination adjustment, there is no discussion as to the propriety of the approved rates shown in Appendix A. There is no finding that the rate from the Springfield group in Illinois of $1.95

for 257 miles is just, reasonable and non-discriminatory, as compared with a rate from Brazil-Clinton to Rockford of $2.07 for 257 miles; nor is there any finding as to why a $1.95 rate of the Milwaukee from Brazil-Clinton to Rockford via its direct line for a haul of 237 miles is unlawful, when compared with the same rate from the Springfield group for a haul of 257 miles, or with the hauls of other carriers serving that group, some of which average as high as 325 miles.

7. The Commission in its report has compared the rates by using the so-called Illinois-Indiana Scale and the Midland Scale as yardsticks, and has stated that it is recognized that rates for more distant groups should not be based primarily upon distance, and that it is the common practice in adjusting differentially related coal rates of according diminishing weight to distance as length of haul increases. The approved rates to the individual destinations shown in Appendix A ignores this principle. For example, to Belvidere, Illinois, the approved rate from the Brazil-Clinton group is $2.07 for 258 miles, or 94.1 per cent of the Illinois-Indiana Scale. From the Springfield group, the approved rate for 279 miles is $1.95, which is but 84.8 [fol. 2-41] per cent of said scale. From the Danville group, 262 miles, the approved rate is $1.95, 88.6 per cent of said scale; from the Princeton group, for a haul of 364 miles, the approved rate is $2.24, or 88.2 per cent of said scale; and from the DuQuoin group, for 363 miles, the approved rate is $2.15, or 84.6 per cent of said scale. To Beloit, Wisconsin, the approved rate from Brazil-Clinton is $2.22 for a haul of 269 miles, 100.9 per cent of the scale; from Fulton-Peoria the approved rate of $1.80 for 170 miles is 100 per cent of the scale; whereas from Springfield the rate of $1.95 for 276 miles, substantially the same distance as from Brazil-Clinton, is 88.6 per cent of the scale. In dealing with Illinois rates, for example, to Dixon the approved rate from Fulton-Peoria of $1.55 for 124 miles is 100 per cent of the scale; while from Danville the rate of $1.85 for 222 miles is 92.5 per cent of the scale. As between the Illinois groups the principle, that as distance increases the percentage of the scale decreases, is recognized, whereas as between the Indiana groups and the Illinois groups that principle is ignored. At Sterling, Illinois, where the hauls from Indiana are longer than from Illinois, the reverse

position is taken. From Brazil-Clinton, a distance of 287 miles, the approved rate is $1.89, 82.2 per cent of the scale; whereas from Springfield, for 184 miles the approved rate of $1.75 is 92.1 per cent of the scale. The approved rate from Springfield is 14 cents less than the approved rate from Brazil-Clinton. The Commission has recognized that a few cents per ton in delivered costs, which includes the freight rate, controls the purchase of coal.

8. The comparison of the average of the rates from the Indiana groups to all of the destinations and from the Illinois groups to all of the destinations, does not establish the propriety of the rates to any of the destinations. [fol. 2-42] The erroneous and inconsistent treatment accorded in the report and order of the Commission of approving relatively higher rates from Indiana and relatively lower rates from Illinois to the destinations east of Rockford, while approving relatively low rates from Indiana and relatively high rates from Illinois to destinations west of Rockford, and averaging the two improper sets of rates, does not result in a reasonable, non-prejudicial and non-discriminatory rate at Rockford, or at any of the destinations.

9. The report discusses and deals with so-called average rates and average distances from the various groups to all of the twelve destinations in northern Illinois and the average rates and average distances from all groups in Illinois and all groups in Indiana to such destinations. The report shows that the average distances are on the basis of the shortest tariff distances, but does not state the method of determining average rate. An analysis of the average rates shows that the Commission has multiplied a group rate by the number of distances from the origin group to a destination and has added the products of such multiplication from each group to each destination for the number of destinations considered, and divided the sum thereof by the total number of distances from the group to all destinations to arrive at the average rate to all destinations. This has been done notwithstanding the fact that only one rate applies from the group via each carrier serving the group. This method of computation is erroneous.

10. The report recites that to Beloit, Wis., the approved rate from the Brazil-Clinton group is $2.22 for 269 miles,

which is 100.9 per cent of the Illinois-Indiana Scale, and the rate of $2.10 from Springfield for 276 miles is 91.3 per [fol. 2-43] cent of said scale, and states that the Springfield rate is on a "somewhat" lower level than the rate from Brazil-Clinton, but that the Springfield rate is the customary 30 cents under southern Illinois to Wisconsin destinations. The report omits to state that the Brazil-Clinton rate is customarily 30 cents under southern Illinois to destinations in southern Wisconsin. The report further states that the southern Illinois rate of $2.40 for 394 miles, which is 91.6 per cent of the scale, is "slightly" higher than the approved rate from the combined Princeton-Boonville group rate of $2.39 for 387 miles, and that the rate from Springfield is "something lower" than the rate from Brazil. The southern Illinois rate 4/10ths of a percentage point higher than the Princeton-Boonville rate is stated to be "slightly" higher, while the Springfield rate, 9.6 percentage points lower than the Brazil-Clinton rate is stated to be "somewhat lower". Measured by the scale 9.6 percentage points amounts to 21 cents or 22 cents, while 4/10ths of a percentage point amounts to 1 cent. To term the one "somewhat lower" and the other "slightly higher" is unreasonable, capricious, and arbitrary.

11. The report states that the differential between Princeton and Linton of 7 cents for a difference in distance of 77 miles is relatively low, but the report approves rates combining the Princeton and Boonville districts which combined average distance exceeds the distance from Linton by 85 miles. In the same paragraph in which it condemns the said 7-cent differential as being relatively low, the report approves rates from Linton-Sullivan to Beloit of $2.32 for 302 miles, and from southern Illinois to Beloit of $2.40 for 394 miles, where there is a difference of but 8 cents for a difference in distance of 92 miles.

[fol. 2-44] 12. The evidence shows the average shortest tariff route distance from the Illinois groups to Beloit is 306 miles and the average rate $2.15, which is 90.3 per cent of the Illinois-Indiana Scale. The average of the approved rates from Indiana is 94.3 per cent of that scale. It is inconsistent, arbitrary and capricious to say that rates that are 94 per cent of the scale are on substantially the same level of rates as from Illinois, which are but 90 per cent of

the scale. The report recognizes the highly competitive situation between the coals of the two States and that a few cents per ton will control the purchase of coal, but the report approves rates from Indiana which on the average are 10 cents per ton higher in level than the rates from Illinois, measured by the yardstick of the Illinois-Indiana Scale.

13. The report contains many statements regarding the production of coal in the various groups in Indiana and in Illinois, and in each of the two States as a whole, which are not material to any of the issues in the case; also comparisons of the production in former years and in 1936, 1940 and part of 1941 in the various Indiana groups, only a small portion of which production moved to the territory involved in this proceeding. The report recites shipments from Illinois origins into Indiana, a territory not involved in the proceeding; it discusses shipments of coal from Illinois and Indiana to Wisconsin and Iowa, a territory which, aside from Beloit, is not involved in the proceeding. The report discusses shipments to Rockford, Freeport and Dixon to show that Indiana had a greater increase in its shipments of coal in 1941 over 1936 than did Illinois, ignoring the fact that for four years, 1930 to 1934, the Milwaukee did not publish rates to Rockford on the level of the Illinois rates, at which point the increase in Indiana shipments took place, [fol. 2-45] and that to Dixon there was a decrease in the tonnage from Indiana and an increase from Illinois. Of the seven destinations in Illinois to which shipments of coal are shown in the record, the shipments in 1941 from Indiana decreased to a greater extent that the shipments from Illinois, except to Rockford, where the Indiana coal had been out of the market for four years, a position which had not been re-established in that market in 1936.

14. Dealing with the total production of the Indiana groups, the Commission in its report ignores the uncontradicted evidence that in 1930 the Princeton-Ayrshire group was enlarged by the addition of mines on the Southern Railway, formerly in the Boonville group, which in that year were accorded the Princeton rate, but attributes the increase in production from the Princeton district to the rate adjustment, rather than to the fact that the district was enlarged by including within it the many mines that had formerly been in the Boonville district.

15. The report states that the carriers expect the same relative shipments, under the proposed rates as occurred under the present rates to the destinations in northern Illinois, but fails to point out that the proposed rates maintain the exact relationship existing under the present rates, whereas the approved rates materially change the present relationships, particularly by requiring increases in the rates from mines on the Milwaukee and the Illinois Central to Rockford and other destinations in northern Illinois amounting to 12 cents per ton more than the proposed increase, and in this respect ignoring the fact that of the coal that moved from Indiana to these destinations the great bulk of it moved from mines on the Milwaukee or the Illinois Central.

[fol. 2-46] **XI**

The report and order of the Commission are illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, because the report discards by inference the undisputed testimony and exhibits introduced by these Petitioners, which were material to the issues in the proceeding, viz.:

1. The carriers and these Petitioners, through the Coal Trade Association of Indiana, introduced evidence showing the average distance from each of the groups in Illinois and Indiana to Rockford, Freeport, Dixon and other destinations in Illinois and to Beloit, Wisconsin, via the short tariff routes of all the carriers serving mines in those groups. This evidence was disregarded and the Commission considered only the distances from the groups via the shortest tariff routes of the carriers, that is, where more than one carrier serves an origin point, it considered the route of the carrier having the shortest haul from such origin to the destination.

3. The report ignores evidence that in reaching its conclusion in the case of *Intrastate Rates on Bituminous Coal Within Illinois*, 182 I. C. C. 537, that the rates from Brazil-Clinton, Indiana, were on a lower basis than from southern Illinois to Rockford and Dixon, the Commission compared unlike things, *i. e.*, the short rate making line distance from southern Illinois and the average distance from all mines in the Brazil-Clinton group; that comparison of like with

like would have shown that the rates from Brazil-Clinton to Rockford, Freeport and Dixon were on a higher level than those from southern Illinois.

4. The report ignores evidence introduced by these Peti- [fol. 2-47] tioners, through the Coal Trade Association of Indiana, of the average of the present rates, and the average of the proposed rates from Indiana and Illinois to the twelve destinations selected by Indiana as representative of the destination territory, and to the twelve destinations selected by the carriers as representative of that territory, and ignores evidence of the average rates that would result from a restoration of the standard differential adjustment, which formerly applied to this territory from Indiana and Illinois, based upon the proposed rates from southern Illinois, which rates would be on a substantially equality of level as between Indiana and the intrastate rates in Illinois to those destinations.

5. The report states that the distance between one mine in the Boonville district and one mine in the Princeton district is 10 miles, whereas the evidence shows that the difference in distance, so far as transportation of coal from the two mines is concerned, is not less than 46 miles. In approving rates from Princeton-Ayrshire and Boonville on the same basis, the Commission ignores this evidence. It also ignores the fact that there are eight mines in the Boonville group and considers only one of such mines.

XII

The Commission erred in denying the petition of these Petitioners, filed on their behalf by the Coal Trade Association of Indiana, to reopen the case and grant rehearing and reconsideration herein. The Commission has repeatedly held heretofore that rates on coal should not be based on quality, and that it can not regard economic conditions in determining the propriety of rates. In this case it considers, and apparently predicates its order upon, competitive conditions in the coal industry, the movement [fol. 2-48] of coal from the various groups to the destination territory, and to many destinations not here involved; and also states that these competitive commercial conditions must be given weight in the determination of the issues. The Commission, having adopted a new policy in this

case, should have granted the petition of these Petitioners to reopen the case so as to give them an opportunity to introduce evidence with respect to this commercial competition and the qualities of the coals and the reasons why the shipments from one district had decreased and those from another had increased.

XIII

The report and order of the Commission are illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, because they require the carriers to increase rates which have not been shown to be less than reasonable minimum rates, and require this without any evidence in the record upon the subject of what is or is not a reasonable minimum rate for any of the transportation service here involved.

XIV

The order of the Commission is illegal, arbitrary, unreasonable and beyond the power of the Commission, because it requires the carriers as they participate in the traffic, to maintain rates on a certain basis to destinations in northern Illinois and to Beloit on the bases of rates stated as approved in the report, when there are no findings in the report that such approved rates to each of the destinations named are just, reasonable, non-discriminatory and non-prejudicial and non-preferential, and no facts are set forth [fol. 2-49] in the report with respect to such individual rates which the Commission states are approved.

XV

The order of the Commission is illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, because it approves rates to Beloit, Wis., and to Rockford and other destinations in northern Illinois to overcome economic and commercial conditions and to increase the movement of coal from Illinois to those destinations and correspondingly reduce the movement of coal from Indiana groups to such destinations.

XVI

The report and order of the Commission are illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, in that the purported findings of

fact and conclusions stated in said report are not supported by substantial evidence and are not clear, definite and complete findings of fact.

XVII

The action of the Commission in denying the petition of these Petitioners for reopening, rehearing, reargument, reconsideration and postponement of the effective date of the order, filed September 27, 1945, was illegal, arbitrary and unreasonable.

[fol. 2-50] XVIII

The report and order of the Commission, as subsequently amended, require respondents to establish on or before February 8, 1946, upon not less than thirty (30) days' notice in the manner prescribed in Section 6 of the Interstate Commerce Act, rates which, if established, will be materially higher than the rates now assessed upon shipments of coal from Indiana to destinations in northern Illinois and to Beloit, Wis., and which will materially change the relationship presently existing in the rates as between some of the origins in Indiana to Rockford, Freeport and other destinations in Illinois, and which will materially change the existing relationship between the rates from Indiana groups and Illinois groups to Beloit, Wisconsin, and to destinations in Illinois. Unless the enforcement of said order is enjoined, Petitioners will suffer irreparable injury and damage from the loss of business at such northern Illinois destinations and at Beloit, Wis., and will be required to pay higher rates upon any coal that might be shipped to that territory under uncancellable contracts.

If such new rates should be put into effect by the filing of tariffs, as required by said order, Petitioners, even if such order should later be set aside as unlawful, would be unable to recover the loss in their revenue which they would sustain by the inability to ship coal to those markets during the period such rates are in effect.

Petitioners have no plain, adequate or complete remedy at law in the premises.

[fol. 2-51] Wherefore, Petitioners respectfully pray:

1. That upon the filing of this petition, a subpoena be issued against the defendant, United States of America, as required by law, and that due and proper service of such

subpoena and of this petition be forthwith made by filing a copy thereof in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice, and that thereby defendant be required, on or before a date specified in such subpoena, to appear herein an answer this petition, but not under oath, answer under oath being hereby expressly waived.

2. That the Court, as soon as practicable, convene a specially constituted court of three judges, as required by 28 U. S. C. A. 47 (38 Stat. 220), to hear Petitioners' motion for a temporary or interlocutory injunction and for final hearing in this proceeding.

3. That pending final hearing of the cause, a temporary stay, or suspension of said order of July 9, 1945, as subsequently amended, be entered herein restraining, enjoining and suspending the execution, effect and enforcement of said order for not more than sixty days.

4. That upon final hearing of this cause, a permanent injunction be issued, decreeing that said order of the Commission, dated July 9, 1945, as aforesaid, is null and void and is set aside, annulled and suspended, in whole or in part, and that its execution, effect and operation be perpetually enjoined and restrained, and that the United States of America be restrained from taking any steps or instituting or prosecuting any proceeding to enforce said order.

5. That this Court grant to the Petitioners such other and [fol. 2-52] further relief as by it may be deemed proper in the premises.

Respectfully submitted, (S.) Earl B. Wilkinson, J. Alfred Moran, Ernest R. Baltzell, Paul Y. Davis. Resident Attorneys for Petitioners: Dailey, Davis, Hartsock & Baltzell, 1100 Hume-Mansur Building, Indianapolis 4, Indiana. Attorneys for Petitioners: Gallagher, Rinaker, Wilkinson & Hall, 231 South La Salle Street, Chicago 4, Illinois.

[fol. 2-53] *Duly sworn to by J. Alfred Moran. Jurat omitted in printing.*

[fols. 3-4] (Entry for December 21, 1945, Continued)

No. 1072 Civil

And thereupon there was issued out of the office of the Clerk of this Court a writ of summons for the defendant to the United States Marshal.

[fol. 5] [File endorsement omitted]

[fol. 5-1] IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

Civil No. 1076

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, Defendant

PETITION—Filed December 27, 1945

To the Honorable Judges of the District Court of the United States for the Southern District of Indiana, Indianapolis Division:

Comes now the petitioner and for its cause of action against the defendant states:

I

Petitioner is a corporation, organized and existing under and by virtue of the Laws of the State of Wisconsin, and owns and operates lines of railroad in the States of Indiana, Illinois, Wisconsin and certain other states, and is engaged in the transportation of property and persons for hire, both interstate and intrastate, as a common carrier [fol. 5-2] by railroad, subject to the Interstate Commerce Act. Petitioner has its principal office at Chicago, Illinois.

On December 1, 1945, under the terms of the modified Plan of Reorganization, approved by the United States District Court, for the Northern District of Illinois, Eastern Division, in a proceeding entitled "In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, No. 60463", petitioner succeeded to all the rights

and obligations of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, which Trustees had, since January 1, 1936, operated said railroad properties in said reorganization proceedings. The petitioner and the Trustees will sometimes herein be referred to as the "Milwaukee Road".

II

The Coal Trade Association of Indiana, protestant, upon whose petition the Interstate Commerce Commission suspended certain tariff schedules, hereinafter referred to, and entered upon an investigation into rates proposed therein, following which a hearing was had and the order herein complained of was entered, is a voluntary association of corporations and firms owning and operating Indiana coal mines, having its principal office and residence in the Southern District of Indiana.

III

The defendant, United States of America, is sued under an Act of Congress, approved October 22, 1913, known as the "Urgent Deficiency Appropriations Act" 38 Stat. L. 219, to enjoin, set aside, and annul a certain order entered by the Interstate Commerce Commission on the 9th day. [fol. 5-3] of July, 1945 in a proceeding known as "Investigation and Suspension, Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois", instituted by the Interstate Commerce Commission, hereinafter called "the Commission" by its order of July 30, 1942, upon the protest hereinabove referred to in paragraph II hereof.

IV

Following an order of the Interstate Commerce Commission, involving the rates on bituminous coal from mines in Illinois, Indiana and Western Kentucky to Beloit, Wisconsin, in a proceeding entitled "*Fairbanks-Morse & Co.* v. *Alton and Southern R. R.*", 251 I. C. C., 181, in which the Commission found that the involved rates to Beloit, although not unreasonable, were unduly prejudicial to Beloit and unduly preferential of Rockford, to the extent that they exceeded the rates to Rockford by more than 15c per ton, the Milwaukee Road, together with other rail-

roads serving mines in the origin territory, above referred to, filed, to become effective August 2, 1942, tariff schedules proposing to increase the then applicable rates from mines in Indiana, Illinois and Western Kentucky to Rockford by 15¢ per ton, and thereby reduce the difference in the rates applicable to Rockford and Beloit, from 30¢ per ton to 15¢ per ton as required by the Commission's order. (Unless otherwise indicated, all rates referred to herein are those applicable to the transportation of one ton.)

The Milwaukee Road proposed no change in its tariff rates applicable to the movement of coal from mines on its railroad to Beloit, those rates being $2.10 from mines in the Brazil district and $2.20 from mines in the Linton district; but proposed increases to Rockford from Milwaukee mines in the Brazil district from $1.80 to $1.95 and from those mines in the Linton district from $1.90 to $2.05. Other [fol. 5-4] necessary and related adjustments were made in its rates to destinations intermediate to Rockford.

The Commission, as above recited, suspended the operation of said proposed tariff schedules and, after hearing, the Commission required said proposed schedules to be cancelled on or before November 16, 1945 upon not less than one day's notice, and further required the filing of new tariff schedules containing the new rates here complained of to become effective the same date on thirty days' notice. The effective date of the order, requiring cancellation of proposed schedules and the filing of new, has been modified by subsequent orders to February 8, 1946.

V

For more than thirty-five years, the petitioner and its predecessors in interest have been engaged in the transportation of bituminous coal in carloads from mines in mining districts in Indiana, known as the Brazil and Linton Indiana groups. These mining groups are the most northerly of the mining districts in Indiana, and coal produced in mines located on the railroad of the petitioner can move over the direct single line route of the petitioner from the mines to Rockford, Illinois and other destinations on petitioner's line in Northern Illinois as well as to Beloit, Wisconsin. The coal produced in the mines in the Brazil and Linton coal mining groups on petitioner's railroad is in direct competition with coal produced in the various coal groups in Illinois. The Illinois coal is of such quality that

the producers of coal in mines located on the petitioner's railroad in Indiana are unable to compete in sales in the important industrial cities of Rockford, Illinois and Beloit, Wisconsin, unless they are accorded for the transportation of their coal, rates relatively no higher, distance and other [fol. 5-5] transportation conditions considered, than those accorded Illinois producers of coal.

Since January 1, 1910 to this date (except for an interruption during the period August 20, 1930 to April 22, 1934, which will hereinafter be explained) the rate per ton on bituminous coal from the Brazil, Indiana district mines on the Milwaukee Road to Rockford, Illinois has been the same, or lower than the rate per ton from the so-called Springfield group in Illinois to the same destination. Under this rate relationship, with the so-called Springfield group in Illinois and the resulting relationship with other related coal mining groups in Illinois, producers of coal in the Brazil mining district have been able to compete in the sale of coal at Rockford and other Northern Illinois destinations and Beloit, Wisconsin.*

During the period August 20, 1930 to April 22, 1934, by reason of reductions in rates applicable for the transportation of coal within Illinois, required by the Order of the Illinois Commerce Commission, rates on coal from the Brazil, Indiana mining district were higher by 17¢ per ton to Rockford, Illinois than those applicable from the Springfield, Illinois district to Rockford, and the difference in rates between those applicable from Brazil and Southern Illinois to Rockford was greatly reduced, resulting during that period in the practical elimination in the use of Indiana coal from the Brazil and Linton districts at Rock-

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*The Commission refers to 1936 as a normal year in the coal industry and recites that in that year 369,492 tons moved from Illinois origins to Rockford, Freeport and Dixon, three important cities in the destination territory, as compared with 99,661 tons from all Indiana origins to those cities. See Exhibit "A", page 196. Although the year 1941 could not be considered a normal year, all business being influenced by war conditions, a rather complete statement of tonnages moving to Northern Illinois destinations and to Beloit, Wisconsin from Illinois and Indiana, taken from exhibits of record, is set forth at page 11 of Exhibit "C" hereto attached.

ford. The distances over the short tariff routes from the Brazil mining group to Rockford, Illinois and Beloit, Wis- [fol. 5-6] consin, the two most important coal consuming cities in the involved destination territory, are found by the Commission in its Report and Order of July 9, 1945 to be less than the distances over the short tariff routes from the Springfield, Illinois mining district to the same destinations, and other transportation conditions are found by the Commission to be sufficiently similar to require the same rate base, yet the Commission, by its Order of July 9, 1945, refuses to permit the petitioner to establish for the transportation of coal from mines on its railroad in the said Brazil district to Rockford and Beloit, rates no higher than those permitted to become effective for the transportation of coal from the Springfield, Illinois district to the same destinations and the said order requires the petitioner to publish and establish rates higher by 12c per ton than those permitted to be published for a greater distance from the Springfield, Illinois group to these important destinations.*

VI

A portion of petitioner's railroad, extending from Chicago in a southerly and easterly direction to Indiana and serving mines in the aforesaid mining districts in Indiana, is dependent for its successful and profitable operation to a very large extent upon the volume of coal traffic transported thereover; and, by petitioner's single line of railroad from mines on its railroad in the said Indiana districts to the important coal consuming destinations in Northern Illinois and Southern Wisconsin, the petitioner and its predecessors have for many years transported a large volume of coal. Unless the petitioner is permitted to [fol. 5-7] continue rates applicable for the transportation of coal relatively and actually no higher than those rates

* The Commission permits a publication of a rate of $1.95 per ton for 257 miles from Springfield to Rockford, but requires the petitioner to publish a rate of $2.07 for 251 miles from Brazil to Rockford. So too, the Commission permits the continuance of a rate of $2.10 for 276 miles from Springfield to Beloit, while requiring the petitioner to publish a rate of $2.22 for 269 miles from Brazil to Beloit. (See page 223, Exhibit "A".)

permitted to be effective from origins in Illinois to the same destinations for a greater service, then petitioner will lose revenues in large sums essential to the successful maintenance and operation of its railroad and the producers of coal at mines served by the petitioner will be unable to successfully sell their product in competition with those producers in Illinois who will enjoy a more favorable rate adjustment. The Milwaukee Road sought by a petition for rehearing and reconsideration to have the order, herein complained of, modified, and in said petition offered to show by evidence, if given the opportunity, the harmful effect of the rates required upon the Milwaukee Road and the mine operators it serves. The said petition for rehearing and reconsideration, filed on the 23rd day of September, 1945, was denied, without opinion, by the Commission's order of November 13, 1945.

VII

A copy of the Commission's Report of July 9, 1945 is hereto attached, marked Exhibit "A" and made a part hereof. Also attached, and made a part hereof, and marked Exhibit "C", is Milwaukee Road's petition for rehearing and reconsideration.

VIII

Petitioner avers and charges that the Order of the Commission entered in the Investigation and Suspension proceeding, No. 5139, on the 9th day of July, 1945, herein complained of, and set forth in full as Exhibit "B", insofar as it requires the petitioner to cancel rates applicable to the transportation of bituminous coal from mines on its lines of railroad from the Brazil and Linton districts in In- [fol. 5-8] diana to destinations in Illinois, and to publish in lieu thereof rates higher than those proposed, and to further publish rates higher than those presently applicable from said mines to Beloit, Wisconsin, is null and void and should in those respects be set aside for the following reasons:

(a) The Commission misconstrued the law and acted beyond powers delegated to it by Congress, in requiring the petitioner to cancel schedules proposing new rates and requiring by its order the establishment of rates higher than those proposed, on the misconception that it could lawfully require rates to be established from the Brazil and

Linton groups higher than those warranted by the facts, in order to permit the establishment of rates for the transportation of coal from the mines of other operators on other railroads located in more distant groups from the destination territory, lower than would be otherwise warranted by the facts.*

(b) The Commission erred in entering its order, requiring the cancellation of said tariff and requiring the publication of higher rates to Rockford and Beloit and related destination stations for the reason that the order requires the petitioner to assess charges for the transportation of coal from the Indiana mines on its railroad to the involved destinations via its single line of railroad, which are relatively higher, distance considered, than the rates which plaintiff is compelled by Commission order to join with other railroad companies for the movement of coal from Illinois mines to the same destinations.

(c) The Commission erred in entering the order requiring the cancellation of the tariff and requiring the [fol. 549] establishment of higher rates because said order is based upon surmise and conjecture and not upon evidence.

(d) The order of the Commission is arbitrary and unreasonable, not supported by evidence and essential findings, and deprives the plaintiff of its right to meet competition on an equal rate basis.

(e) The petitioner proposed no change in its rate from mines on its railroad in the Brazil and Linton districts to Beloit. The level of those rates was not in issue in this proceeding and the Commission erred and acted on issues beyond the scope of investigation and hearing and without evidence in ordering petitioner to increase those rates.

(f) The Commission erred and acted beyond its powers by requiring the petitioner to remove alleged discrimination and prejudice by increasing its rates and afforded the

* "That low differential necessarily reflects itself in relatively higher rates from the near Indiana groups as well as relatively lower rates from the more distant Indiana group or groups than might otherwise be warranted". (Page 201 of Exhibit "A".)

petitioner no opportunity to remove the alleged discrimination and prejudice by altering other rates.

(g) The Commission acted beyond the scope of its authority and erred in entering its order requiring the cancellation of the tariff schedules and the establishment of higher rates without appropriate and essential findings that the condemned rates were unlawful and in violation of some sections of the Interstate Commerce Act.

(h) Petitioner further avers and charges that the Commission, in denying, as aforesaid, the petitioner's petition for rehearing and reconsideration, acted arbitrarily and unreasonably.

IX

Petitioner further avers that if the order of the Commission, directing the cancellation of the proposed tariff schedules, and requiring the publication of higher rates to destinations in Northern Illinois and Beloit, Wisconsin, is permitted to become effective, petitioner will be irrepa- [fol. 5-10] rably injured and damaged and, unless said order is enjoined and set aside by this Honorable Court, said order will have to be complied with February 8, 1946.

X

Petitioner has no adequate remedy at law.

Wherefore, inasmuch as your petitioner is remediless in the premises at law and relievable only in a court of equity, the petitioner prays as follows:

1. That upon the filing of this petition, a subpoena be issued against the defendant, United States of America, as required by law, and that due and proper service of such subpoena and of this petition be forthwith made by filing a copy thereof in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice, and that thereby defendant be required, on or before a date specified in such subpoena, to appear herein and answer this petition, but not under oath; answer under oath being hereby expressly waived;

2. That the Court, as soon as practicable, convene a specially constituted court of three judges, as required by 28 U. S. C. A. 47 (38 Stat. 220), to hear petitioner's motion

for a temporary or interlocutory injunction and for final hearing in this proceeding;

3. That pending final hearing of the cause a temporary stay or suspension of said order of July 9, 1945, as subsequently amended, be entered herein restraining, enjoining and suspending the execution, effect and enforcement of said order in so far as it requires petitioner to cancel the proposed tariff schedules and publish new tariff schedules, for not more than sixty days;

4. That upon final hearing of this cause, a permanent injunction be issued, decreeing that said order of the Com-[fol. 5-11] mission, dated July 9, 1945, as aforesaid, is null and void and is set aside, annulled and suspended, in whole or in part, and that its execution, effect and operation be perpetually enjoined and restrained, and that the United States of America be restrained from taking any steps or instituting or prosecuting any proceeding to enforce said order; and

5. That this Court grant to the petitioner such other and further relief as by it may be deemed proper in the premises.

Respectfully submitted,

Bert Beasley, Carson L. Taylor, William L. Hunter, Attorneys for Petitioner.

A. N. Whitlock, M. L. Bluhm, of Counsel.

[fol. 5-12] *Duly sworn to by Walter H. Kuhls. Jurat omitted in printing.*

[fol. 6] (Entry for December 27, 1945, continued)

No. 1076 Civil

And thereupon there was issued out of the office of the Clerk of this Court a writ of summons for the defendant to the United States Marshal.

[fols. 7-8] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 1072 Civil

DESIGNATION OF JUDGES—Filed December 31, 1945

The assignment of two judges by the undersigned being required under Sec. 380 a, 28 U. S. C. A., I hereby designate the Honorable Evan A. Evans, United States Circuit Judge in and for the Seventh Judicial Circuit, and the Honorable Michael L. Igoe, United States District Judge for the Northern District of Illinois, to sit as judges in the above entitled cause.

(Signed) Evan A. Evans, Senior United States Circuit Judge in and for the Seventh Judicial Circuit.

Chicago, Illinois, December 28, 1945."

[fol. 9] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

No. 1072 Civil

PROOF OF NOTICE—Filed January 3, 1946

To the Honorable Tom C. Clark, Attorney General for the United States of America:

To the Interstate Commerce Commission:

Please Take Notice that the petition in the above entitled cause was filed on the 21st day of December, 1945, in the United States District Court for the Southern District of Indiana, and that the Judge of said Court is convening a specially constituted three judge court as provided for by 28 U. S. C. A. 47 (38 Stat. 220) and has fixed Thursday, the 3rd day of January, 1946, at 2:00 P. M., in the Court Room of the United States District Court for the Southern District of Indiana at Indianapolis, Indiana, as the time and place for the hearing on the prayer of Petitioners for a temporary stay or suspension, for not more than sixty (60) days, of the Order of the Interstate Commerce Commission

entered July 9, 1945, and subsequently amended, in I. & S. Docket No. 5139, as prayed in said petition.

A true copy of the petition filed herein is hereto attached and you may appear at the above mentioned time and place [fol. 10] on the hearing of Petitioners' motion for a temporary stay or suspension of said Order if you see fit to do so.

Dated this 21st day of December, 1945.

Dailey, Davis, Hartsock & Baltzell, Gallagher, Rinaker, Wilkinson & Hall, Attorneys for Petitioners.

Of Counsel: (Sgd.) Earl B. Wilkinson, J. Alfred Moran, Paul Y. Davis, Ernest R. Baltzell.

Received a copy of the above and foregoing notice and a copy of the petition therein referred to this 21st day of December, 1945.

For the Attorney General, (Signed) Donald C. Cook, Executive Assistant to the Attorney General. For the Interstate Commerce Commission, (Signed) W. P. Bartel, Secretary.

[fol. 11] IN UNITED STATES SUPREME COURT

No. 1072 Civil

ORDER ASSIGNING CASE.—January 3, 1946

This cause having heretofore been assigned for hearing on the application of the petitioners for an interlocutory injunction and temporary stay restraining, enjoining and suspending the execution and enforcement of an order of the Interstate Commerce Commission entered July 9, 1945 to become effective November 16, 1945 upon notice as therein specified and subsequently modified to become effective February 8, 1946 upon like notice; and the Court being advised by counsel that on December 29, 1945 said Commission entered its order further modifying said order of July 9, 1945 so that it will become effective April 8, 1946 in lieu of February 8, 1946 upon like notice; and it appearing to the Court that since such order of December 29, 1945 final hearing can be had prior to April 8, 1946;

It Is Ordered That the hearing upon the petitioners' application for an interlocutory injunction and temporary stay heretofore assigned and set for January 3, 1946, be and the same hereby is, continued to the day of final hearing herein and that said final hearing shall be had on March 25, 1946 at the hour of 10:00 o'clock, A. M., in the court room of the United States District Court for the Southern District of Indiana, Indianapolis Division, at Indianapolis, Indiana, at which time the Court will hear any and all matters that may properly be presented for determination in this action.

It Is Further Ordered That the Clerk of this Court shall immediately mail copies of this order to the Interstate [fol. 12] Commerce Commission, the Attorney General of the United States, the United States District Attorney for the Southern District of Indiana, and the attorneys for the petitioners and intervenors herein.

[fols. 13-14] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 1076 Civil

DESIGNATION OF JUDGES—Filed January 3, 1946

The assignment of two judges by the undersigned being required under Sec. 380 a, 28 U. S. C. A., I hereby designate the Honorable Evan A. Evans, United States Circuit Judge in and for the Seventh Judicial Circuit, and the Honorable Michael L. Igoe, United States District Judge for the Northern District of Illinois, to sit as judges in the above entitled cause.

(Signed) Evan A. Evans, Senior United States Circuit Judge in and for the Seventh Judicial Circuit."

[fol. 15] IN UNITED STATES DISTRICT COURT

Civil No. 1076

[Title omitted]

PROOF OF NOTICE—Filed January 3, 1946

To the Honorable Tom Clark, Attorney General for the United States of America: to the Interstate Commerce Commission: and Hon. B. Howard Caughran, U. S. Dist. Attorney, Indianapolis, Ind.:

Please take notice that petitioner's petition in the above-mentioned case was filed on this day in the District Court of the United States, for the Southern District of Indiana, Indianapolis Division, and that the judge of said court hearing equity cases is convening a specially constituted three-judge court as provided for by the Urgent Deficiency Appropriations Act of October 22, 1913, 38 Statutes at Large 219, and has fixed Thursday, the 3rd day of January, 1946, at 2:00 P. M., at the United States Court House in Indianapolis, Indiana, as the time and place for the hearing on the prayer of petitioner for an interlocutory injunction as prayed for in petitioner's petition.

A true copy of the petition filed herein is hereto attached, and you may appear at the above-mentioned time and place on the hearing of petitioner's motion for an interlocutory injunction if you see fit to do so.

Dated this 27th day of December, 1945.

(S.) Bert Beasley, Carson L. Taylor, William L. Hunter, Attorneys for Petitioner.

[fol. 16] A. N. Whitlock and M. L. Bluhm, of Counsel.

Received a copy of the above and foregoing notice and of the petition therein referred to this 27 day of December, A. D., 1945.

For the Attorney General: (S.) B. Howard Caughran, U. S. Atty., for Interstate Commerce Commission.

A. N. Whitlock and M. L. Bluhm, of Counsel.

Received a copy of the above and foregoing notice and of the petition therein referred to this 28th day of December, A. D., 1945.

For the Attorney General: (S.) Nelson L. Thomas, Attorney, for Interstate Commerce Commission.

[fol. 17] IN UNITED STATES DISTRICT COURT

No. 1076 Civil

ORDER ASSIGNING CASE—January 3, 1946

This cause having heretofore been assigned for hearing on the application of the petitioner for an interlocutory injunction restraining and suspending enforcement of the order of the Interstate Commerce Commission, as amended, mentioned in the petition filed herein; and the Court being advised by counsel that on December 29, 1945 said Commission entered its order so that it will become effective April 8, 1946; and it appearing to the Court that since such order of December 29, 1945 final hearing can be had prior to April 8, 1946.

It Is Ordered That the hearing upon the petitioner's application for interlocutory injunction and restraining order heretofore assigned and set for January , 1946, be, and the same hereby is, continued to the day of final hearing herein and that said final hearing shall be had on March 25, 1946 at the hour of 10:00 o'clock A. M. in the court room of the United States District Court for the Southern District of Indiana, Indianapolis Division, at Indianapolis, Indiana, at which time the Court will hear any and all matters that may properly be presented for determination in this cause.

It Is Further Ordered That the Clerk of this Court mail copies of this order to the Interstate Commerce Commission, the Attorney General of the United States, the United States District Attorney for the Southern District of Indiana, and the attorneys for the petitioner and interveners herein.

[fols. 18-19] IN UNITED STATES DISTRICT COURT

No. 1072 Civil—No. 1076 Civil

ORDER CONSOLIDATING CAUSES—January 3, 1946

Come now the parties in the above entitled causes of action by their respective attorneys and it is.

Ordered by the Court that the above causes be, and are, hereby consolidated for all purposes.

[fol. 20] IN UNITED STATES DISTRICT COURT

Civil No. 1072

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed February 18, 1946

Now comes the defendant, United States of America, and for its answer to the petition or complaint in the above-entitled cause, answers and says:

1. Defendant admits the allegations of paragraph I of the complaint.

2. Defendant admits the allegations of paragraphs II and IV of the complaint, except that defendant alleges that the proceedings before the Interstate Commerce Commission, orders, records, pleadings, rate schedules and tariffs therein referred to, are in writing and speak for themselves, and neither defendant nor the Commission is bound by plaintiffs' characterization thereof.

3. Defendant admits the allegations of paragraph III of the complaint, except that defendant objects to the consideration by this Court of the record in I. & S. Docket No. 5139 and Docket No. 28881, therein referred to, unless the said record is duly introduced in evidence before this Court at the trial of the cause; and except that defendant objects [fol. 21] to consideration of Exhibits A and F to the complaint, therein referred to, except as evidence of the fact, which is admitted, that said pleadings were filed with the Commission, and that the Commission denied plaintiffs' petition for reconsideration, and plaintiffs' suit is therefore not premature under the terms of Section 17(9) of the Interstate Commerce Act (49 U. S. C. 17(9)).

4. Defendant denies the allegations of paragraphs V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, and XVII of the complaint.

Wherefore, defendant prays that the relief prayed for by plaintiffs be denied and that the complaint be dismissed, plaintiffs to pay the costs.

(Signed) Edward Dumbauld, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

Wendell Berge, Assistant Attorney General; B. Howard Caughran, United States Attorney,

[fols. 22-23] I certify that copies of the foregoing answer were this day mailed to the following persons:

Daily, Davis, Hartsock & Baltzell, 1100 Hume-Mansur Building, Indianapolis 4, Indiana.

Gallagher, Rinaker, Wilkinson & Hall, 231 South La Salle Street, Chicago 4, Illinois.

Erle J. Zoll, Jr., Esq., 135 East Eleventh Place, Chicago 5, Illinois.

J. E. Marks, Esq., 145 East High Street, Lexington 4, Kentucky.

Nelson Thomas, Esq., Interstate Commerce Commission, Washington 25, D. C.

This 15th day of February, 1946.

(Signed) Edward Dumbauld, Special Assistant to the Attorney General.

[fol. 24] In United States District Court

Civil Action No. 1072

[Title omitted]

Motion for Leave to Intervene as a Defendant—Filed February 19, 1946

Comes now Kentucky Coal Agency, Incorporated, Applicant for Intervention, by its Attorney, J. E. Marks, and, pursuant to Section 45a of Title 28, of the United States (Sections 212 and 213 of the Judicial Code), moves the Court to enter an order permitting it to intervene as a defendant in the above-entitled proceeding, and to file in-

stanter its petition in intervention, copy of which is attached hereto.

The grounds upon which Applicant relies in support of this motion are set forth in said petition.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Attorney for Applicant for Intervention.

[fol. 25] IN UNITED STATES DISTRICT COURT

No. 1072 Civil

ORDER GRANTING LEAVE TO INTERVENE—February 19, 1946

This cause coming on to be heard on the motion of the above-named Applicant for leave to intervene as a party defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicant should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, that Kentucky Coal Agency, Incorporated, be, and it hereby is, granted leave to intervene in the above-entitled proceeding as a party defendant and to file instanter its petition in intervention therein, and

It Is Further Ordered, that the attorney for Kentucky Coal Agency, Incorporated, shall give notice of the entry of this order, and at the time of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Commission, the United States District Attorney for the Southern District of Indiana, and the attorneys for the petitioners and intervenors herein.

[fol. 26] IN UNITED STATES DISTRICT COURT

Civil Action No. 1072

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AS A DEFENDANT.—Filed February 19, 1946

Comes now Kentucky Coal Agency, Incorporated, Applicant for Intervention, and for grounds of its proposed intervention as a defendant says:

I.

That the above-entitled proceeding was commenced in this Court by the Ayrshire Collieries Corporation, a corporation, et al., original petitioners, by the filing of a petition, on December 21, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By said order, as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines in the midwestern coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

[fol. 27] II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Applicant, Kentucky Coal Agency, Incorporated, is a Kentucky corporation with its principal office and place of business at Madisonville, Kentucky, and that its stockholders own and operate coal mines in western Kentucky,

in what is known as the western Kentucky coal field, and that said mines are served by the Illinois Central Railroad or Louisville and Nashville Railroad, or both of said railroads.

IV

That Applicant was authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and that it did intervene and actively participate in said proceeding. The specific findings respecting the rates from the western Kentucky mines are set forth in the report of the Commission, dated July 9, 1945, as will be seen by reference to pages 100, 101, 111 (No. 14), and 113 (No. 4), of the original petition herein.

V

That Applicant's stockholders ship coal from their mines in western Kentucky to the destinations embraced in said order of the Interstate Commerce Commission, and that they will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission for the future, and will be irreparably damaged, if said order is enjoined, set aside, annulled or suspended, as sought by petitioners.

[fols. 28-29] Wherefore, Applicant, Kentucky Coal Agency, Incorporated, in accordance with the provisions of Section 45a of Title 28, of the United States Code, prays the Court for leave to intervene as a party Defendant in opposition to the petition filed by Ayrshire Collieries Corporation, a corporation, et al., in the above-entitled proceeding.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Attorney for Applicant for Intervention.

Duly sworn to by H. C. Moore. Jurat omitted in printing.

[fol. 30] IN UNITED STATES DISTRICT COURT

Civil Action No. 1072

[Title omitted]

MOTION FOR LEAVE TO INTERVENE AS DEFENDANT—Filed February 19, 1946

Comes now Railroad Commission of Kentucky, Applicant for Intervention, by its Attorneys, and pursuant to Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code), moves the Court to enter an order permitting it to intervene as a defendant in the above-entitled proceeding, and to file instanter its petition in intervention, copy of which is attached hereto.

[fol. 31] The grounds upon which Applicant relies in support of this motion are set forth in said petition.

(Signed) Eldon S. Dummit, Attorney General of Kentucky, Frankfort, Kentucky; (Signed) M. B. Holifield, Assistant Attorney General of Kentucky, Frankfort, Kentucky, Attorneys for Applicant for Intervention.

J. E. Marks, 145 East High Street, Lexington 4, Kentucky, of Counsel.

[fol. 32] IN UNITED STATES DISTRICT COURT

No. 1072 Civil

ORDER GRANTING LEAVE TO INTERVENE—February 19, 1946

This cause coming on to be heard on the motion of the above-named Applicant for leave to intervene as a party defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicant should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, That Railroad Commission of Kentucky, be, and it hereby is, granted leave to intervene in the above-entitled proceeding as a party defendant and to file instanter its petition in intervention therein, and

It Is Further Ordered, that the attorneys for Applicant shall give notice of the entry of this order, and at the time of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Commission, the United States District Attorney for the Southern District of Indiana, and the attorneys for the plaintiffs and intervenors herein.

[fol. 33] IN UNITED STATES DISTRICT COURT

Civil Action No. 1072

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AS A DEFENDANT—Filed February 19, 1946

Comes now Railroad Commission of Kentucky, Applicant for Intervention, and for grounds of its proposed intervention as a defendant says:

I

That the above-entitled proceeding was commenced in this Court by the Ayrshire Collieries Corporation, a corporation, et al., original petitioners, by the filing of a petition on December 21, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission, dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to [fol. 34] Beloit, Wis. and Northern Illinois." By said order, as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines in the midwestern coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the

Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Applicant, Railroad Commission of Kentucky, is a body politic, created by the Constitution of the Commonwealth of Kentucky, and is represented in this proceeding by Frank L. McCarthy, Jack E. Fisher, and Clay M. Bishop, its duly elected, qualified and acting members, who file this petition in its behalf and in behalf of the citizens of Kentucky, and by their authority as such members. Under the laws of the Commonwealth of Kentucky (Section 276.190 of the Kentucky Revised Statutes, 1944), Applicant, Railroad Commission of Kentucky, is authorized and directed to examine the interstate freight rates charged by railroads between points in Kentucky, on the one hand, and points in other states, on the other hand, and to seek relief from the Interstate Commerce Commission, if such rates are found excessive, unreasonable or discriminatory.

Applicant has its principal office and place of business at Frankfort, Kentucky.

[fol. 35]

IV

That Applicant was authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and that it did intervene and actively participate in said proceeding. The specific findings respecting the rates from the western Kentucky mines are set forth in the report of the Commission, dated July 9, 1945, as will be seen by reference to pages 100, 101, 111 (No. 14), and 113 (No. 4), of the original petition herein.

V

That the mining of bituminous coal is one of the principal industries of Kentucky, and that the success of the citizens of Kentucky engaged in this industry, including mine owners and their employees, and of numerous other citizens of the state who are directly or indirectly connected with the coal industry, depends in a large measure upon the establishment and maintenance of reasonable and other-

wise lawful rates on coal from producing points in Kentucky to consuming points in other states.

VI

That the operators of coal mines in western Kentucky market, or endeavor to market, a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission, and that they will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission for the future, and that they and other citizens of Kentucky will be irreparably damaged, if said order is enjoined, set aside, annulled or suspended, as sought by petitioners.

Wherefore, Applicant, Railroad Commission of Kentucky, in accordance with the provisions of Section 45a of Title 28 of the United States Code, prays the Court for leave to intervene as a party defendant in opposition to the petition [fols. 36-37] filed by Ayrshire Collieries Corporation, a corporation, et al., in the above-entitled proceeding.

(Signed) Eldon S. Dummit, Attorney General of Kentucky, Frankfort, Kentucky; M. B. Holifield, Assistant Attorney General of Kentucky, Frankfort, Kentucky, Attorneys for Applicant for Intervention.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, of Counsel.

Duly sworn to by Frank L. McCarthy. Jurat omitted in printing.

[fol. 38] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

MOTION FOR LEAVE TO INTERVENE AS A DEFENDANT—Filed February 19, 1946

Comes now Kentucky Coal Agency, Incorporated, Applicant for Intervention, by its Attorney, J. E. Marks, and, pursuant to Section 45a of Title 28, of the United States

Code (Sections 212 and 213 of the Judicial Code), moves the Court to enter an order permitting it to intervene as a defendant in the above-entitled proceeding, and to file instanter its petition in intervention, copy of which is attached hereto.

The grounds upon which Applicant relies in support of this motion are set forth in said petition.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Attorney for Applicant for Intervention.

[fol. 39] IN UNITED STATES DISTRICT COURT

No. 1076 Civil

ORDER GRANTING LEAVE TO INTERVENE—February 19, 1946

This cause coming on to be heard on the motion of the above-named Applicant for leave to intervene as a party defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicant should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, That Kentucky Coal Agency, Incorporated, be and it hereby is, granted leave to intervene in the above-entitled proceeding as a party defendant and to file instanter its petition in intervention therein, and

It Is Further Ordered, that the attorneys for Applicant shall give notice of the entry of this order, and at the time of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Commission, the United States District Attorney for the Southern District of Indiana, and the attorneys for the plaintiff and intervenors herein.

(Signed) Evan A. Evans, United States District Judge.

[fol. 40] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AS A DEFENDANT—Filed February 19, 1946

Comes now Kentucky Coal Agency, Incorporated, Applicant for Intervention, and for grounds of its proposed intervention as a defendant says:

I

That the above-entitled proceeding was commenced in this Court by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, original petitioner, by the filing of a petition, on December 27, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By said order, as amended, the respondent railroads are re-[fol. 41] quired to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines in the midwestern coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Applicant, Kentucky Coal Agency, Incorporated, is a Kentucky corporation with its principal office and place of business at Madisonville, Kentucky, and that its stockholders own and operate coal mines in western Kentucky, in what is known as the western Kentucky coal field, and

that said mines are served by the Illinois Central Railroad or Louisville and Nashville Railroad, or both of said railroads.

IV

That Applicant was authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and that it did intervene and actively participate in said proceeding. The specific findings respecting the rates from the western Kentucky mines are set forth in the report of the Commission, dated July 9, 1945, as will be seen by reference to pages 100, 101, 111 (No. 14), and 113 (No. 4), of the original petition in Civil Action No. 1072.

V

That Applicant's stockholders ship coal from their mines in western Kentucky to the destinations embraced in said [fols. 42-43] order of the Interstate Commission, and that they will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission for the future, and will be irreparably damaged, if said order is enjoined, set aside, annulled or suspended, as sought by petitioners.

Wherefore, Applicant, Kentucky Coal Agency, Incorporated, in accordance with the provisions of Section 45a of Title 28, of the United States Code, prays the Court for leave to intervene as a party Defendant in opposition to the petition filed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the above-entitled proceeding.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Attorney for Applicant for Intervention.

Duly sworn to by H. C. Moore. Jurat omitted in printing.

[fol. 44] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

MOTION FOR LEAVE TO INTERVENE AS A DEFENDANT—Filed February 19, 1946

Comes now Railroad Commission of Kentucky, Applicant for Intervention, by its Attorneys, and pursuant to Section 45a of Title 28, of the United States Code, (Sections 212 and 213 of the Judicial Code), moves the Court to enter an order permitting it to intervene as a defendant in the above-entitled proceeding, and to file instanter its petition in intervention, copy of which is attached hereto.

[fol. 45] The grounds upon which Applicant relies in support of this motion are set forth in said petition.

(Signed) Eldon S. Dummit, Attorney General of Kentucky, Frankfort, Kentucky; (Signed) M. B. Holifield, Assistant Attorney General of Kentucky, Attorneys for Applicant for Intervention.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Of Counsel.

[fol. 46] IN UNITED STATES DISTRICT COURT

No. 1076. Civil

ORDER GRANTING LEAVE TO INTERVENE—February 19, 1946

This cause coming on to be heard on the motion of the above-named Applicant for leave to intervene as a party defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicant should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, That Railroad Commission of Kentucky, be, and it hereby is, granted leave to intervene in the above-entitled proceeding as a party defendant and to file instanter its petition in intervention therein, and

It Is Further Ordered, that the attorneys for Applicant shall give notice of the entry of this order, and at the time

of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Commission, the United States District Attorney for the Southern District of Indiana, and the attorneys for the plaintiff and intervenors herein.

[fol. 47] IN UNITED STATES DISTRICT COURT

Civil Action. No. 1076

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AS A DEFENDANT—Filed February 19, 1946

Comes now Railroad Commission of Kentucky, Applicant for Intervention, and for grounds of its proposed intervention as a defendant says:

I

That the above-entitled proceeding was commenced in this Court by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, original petitioner, by the filing of a petition, on December 27, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By [fol. 48] said order, as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines in the midwestern coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of

right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Applicant, Railroad Commission of Kentucky, is a body politic, created by the Constitution of the Commonwealth of Kentucky, and is represented in this proceeding by Frank L. McCarthy, Jack E. Fisher, and Clay M. Bishop, its duly elected, qualified and acting members, who file this petition in its behalf and in behalf of the citizens of Kentucky, and by their authority as such members. Under the laws of the Commonwealth of Kentucky (Section 276.190 of the Kentucky Revised Statutes, 1944), Applicant, Railroad Commission of Kentucky, is authorized and directed to examine the interstate freight rates charged by railroads between points in Kentucky, on the one hand, and points in other states, on the other hand, and to seek relief from the Interstate Commerce Commission, if such rates are found excessive, unreasonable or discriminatory.

Applicant has its principal office and place of business at Frankfort, Kentucky.

[fol. 49]

IV

That Applicant was authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and that it did intervene and actively participate in said proceeding. The specific findings respecting the rates from the western Kentucky mines are set forth in the report of the Commission, dated July 9, 1945, as will be seen by reference to pages 100, 101, 111 (No. 14), and 113 (No. 4), of the original petition herein.

V

That the mining of bituminous coal is one of the principal industries of Kentucky, and that the success of the citizens of Kentucky engaged in this industry, including mine owners and their employees, and of numerous other citizens of the state who are directly or indirectly connected with the coal industry, depends in a large measure upon the establishment and maintenance of reasonable and otherwise lawful rates on coal from producing points in Kentucky to consuming points in other states.

VI

That the operators of coal mines in western Kentucky market, or endeavor to market, a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission, and that they will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission for the future, and that they and other citizens of Kentucky will be irreparably damaged, if said order is enjoined, set aside, annulled or suspended, as sought by petitioner.

Wherefore, Applicant, Railroad Commission of Kentucky, in accordance with the provisions of Section 45a of Title 28 of the United States Code, prays the Court for leave to intervene as a party defendant in opposition to [fols. 50-51] the petition filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the above-entitled proceeding.

(Signed) Eldon S. Dummit, Attorney General of Kentucky, Frankfort, Kentucky. (Signed) M. B. Holifield, Assistant Attorney General of Kentucky, Frankfort, Kentucky, Attorneys for Applicant for Intervention.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Of Counsel.

Duly sworn to by Frank L. McCarthy. Jurat omitted in printing.

[fol. 52] In United States District Court

Civil Action. No. 1072.

[Title omitted]

Motion for Leave to Intervene as Defendants—Filed February 26, 1946

Come now:

The Alton Railroad Company (Henry A. Gardner, Trustee),

The Atchison, Topeka and Santa Fe Railway Company,

Chicago and Eastern Illinois Railway Company,
Chicago & Illinois Midland Railway Company,
Chicago and North Western Railway Company,
Chicago, Burlington & Quincy Railroad Company,
The Chicago, Rock Island and Pacific Railway Company (Joseph B. Fleming and Aaron Colnon, Trustees),
Chicago Great Western Railway Company,
Illinois Central Railroad Company,
Louisville and Nashville Railroad Company, and
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee),

applicants for intervention, and, pursuant to Section 45a of Title 28, of the United States Code, (sections 212 and 213 of the Judicial Code), hereby move the Court to enter an [fol. 53] order permitting them to intervene as defendants in the above-entitled proceeding, and to file instanter their petition in intervention, a copy of which is attached hereto.

The grounds upon which applicants rely in support of this motion are set forth in said petition.

(Signed) Erle J. Zoll, Jr., 135 East Eleventh Place, Chicago 5, Illinois, Attorney for Applicants for Intervention.

Fesler, Elam & Fauvre, 129 East Market Street, Indianapolis 4, Indiana, Resident Attorneys for Applicants for Intervention.

[fol. 54] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

MOTION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed February 26, 1946

Come now The Alton Railroad Company (Henry A. Gardner, Trustee), The Atchison, Topeka and Santa Fe Railway Company, Chicago and Eastern Illinois Railway Company, Chicago & Illinois Midland Railway Company, Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island and

Pacific Railway Company (Joseph B. Fleming and Aaron Colnon, Trustees), Chicago Great Western Railway Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company, and Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), applicants for intervention, and pursuant to Section 45a of Title 28, of the United States Code, (Sections 212 and 213 of the Judicial Code), hereby move the Court to enter an order [fol. 55] permitting them to intervene as defendants in the above-entitled proceeding, and to file instanter their petition in intervention, a copy of which is attached hereto.

The grounds upon which applicants rely in support of this motion are set forth in said petition.

(Signed) Erle J. Zoll, Jr., 135 East Eleventh Place, Chicago 5, Illinois, Attorney for Applicants for Intervention.

Fesler, Elam & Fauvre, 129 East Market Street, Indianapolis 4, Indiana, Resident Attorneys for Applicants for Intervention.

[fol. 56] In United States District Court

No. 1072 Civil—No. 1076 Civil

Order Granting Leave to Intervene—February 26, 1946

This cause coming on to be heard on the motion of the above-named applicants for leave to intervene as parties defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said applicants should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It is ordered, that The Alton Railroad Company (Henry A. Gardner, Trustee), The Atchison, Topeka and Santa Fe Railway Company, Chicago and Eastern Illinois Railway Company, Chicago & Illinois Midland Railway Company, Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island and Pacific Railway Company (Joseph B. Fleming and Aaron Colnon, Trustees), Chicago Great Western Railway Company, Illinois Central Railroad Company, Louis-

ville and Nashville Railroad Company, and Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), be, and they hereby are, granted leave to intervene in the above-entitled proceeding as parties defendant and to file instanter their petition in intervention, therein, and it is further ordered, that counsel for the applicants above named shall give notice of the entry of this order, and at the time of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Com-[fol. 57] mission, the United States District Attorney for the Southern District of Indiana, and the attorneys for the petitioners and interveners herein.

[fol. 58] IN UNITED STATES DISTRICT COURT

Civil Action No. 1072

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed February 26, 1946

Come now The Alton Railroad Company (Henry A. Gardner, Trustee), The Atchison, Topeka and Santa Fe Railway Company, Chicago and Eastern Illinois Railway Company, Chicago & Illinois Midland Railway Company, Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island and Pacific Railway Company (Joseph B. Fleming and Aaron Colnon, Trustees), Chicago Great Western Railway Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company, and Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), applicants for intervention, and for grounds of their proposed intervention as defendants say:

[fol. 59]

I

That the above-entitled proceeding was commenced in this Court by the Ayrshire Collieries Corporation, a corporation, et al., original petitioners, by the filing of a petition on December 21, 1945, seeking to enjoin, set aside,

annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By said order, as amended, the respondent railroads are required to establish, on or before April 8, 1946, certain revised rates on coal, carloads, from mines in the midwestern coal field to destinations in northern Illinons and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That applicants are each common carriers by railroad subject to the Interstate Commerce Act, as amended, and that each of them was a party in interest to the proceeding before the Interstate Commerce Commission, I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois, the order of the Commission entered in that proceeding July 30, 1942, naming each of the aforesaid applicants as respondents to such proceeding.

[fol. 60] Wherefore, applicants in accordance with the provisions of Section 45a of Title 28 of the United States Code, pray the Court for leave to intervene as parties defendant in opposition to the petition filed by Ayrshire Collieries Corporation, a corporation, et al., in the above-entitled proceeding.

(Signed) Erle J. Zoll, Jr., 135 East Eleventh Place, Chicago 5, Illinois, Attorney for Applicants for Intervention.

Fesler, Elam & Fauvre, 129 East Market Street, Indianapolis 4, Indiana, Resident Attorneys for Applicants for Intervention.

[fol. 61] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed February 26, 1946

Come now

The Alton Railroad Company (Henry A. Gardner, Trustee),
The Atchison, Topeka and Santa Fe Railway Company,
Chicago and Eastern Illinois Railway Company,
Chicago & Illinois Midland Railway Company,
Chicago and North Western Railway Company,
Chicago, Burlington & Quincy Railroad Company,
The Chicago, Rock Island and Pacific Railway Company (Joseph B. Fleming and Aaron Colnon, Trustees),
Chicago Great Western Railway Company,
Illinois Central Railroad Company,
Louisville and Nashville Railroad Company, and
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee),

applicants for intervention, and for grounds of their proposed intervention as defendants say:

[fol. 62]

I

That the above-entitled proceeding was commenced in this Court by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, original petitioner, by the filing of a petition on December 27, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By said order, as amended, the respondent railroads are required to establish, on or before April 8, 1946, certain revised rates on coal, carloads, from mines in the midwestern coal field to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in

part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That applicants are each common carriers by railroad subject to the Interstate Commerce Act, as amended, and that each of them was a party in interest to the proceeding before the Interstate Commerce Commission, I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois, the order of the Commission entered in that proceeding July 30, 1942, naming each of the aforesaid applicants as respondents to such proceeding.

[fols. 63-64] Wherefore, applicants in accordance with the provisions of Section 45a of Title 28 of the United States Code, pray the Court for leave to intervene as parties defendant in opposition to the petition filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the above-entitled proceeding.

(Signed) Erle J. Zoll, Jr., 135 East Eleventh Place, Chicago 5, Illinois, Attorney for Applicants for Intervention.

Fesler, Elam & Fauvre, 129 East Market Street, Indianapolis 4, Indiana, Resident Attorneys for Applicants for Intervention.

[fol. 65] IN UNITED STATES DISTRICT COURT

Civil No. 1076

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed February 26, 1946

Now comes the defendant, the United States of America, and for its answer to the petition or complaint in the above-entitled cause, answers and says:

1. Defendant admits the allegations of paragraphs I, II, and III of the complaint.

2. Defendant admits the allegations of paragraph IV of the complaint, except that defendant alleges that the tariffs and orders of the Interstate Commerce Commission referred to therein are in writing and speak for themselves, and neither defendant nor the said Commission is bound by plaintiff's characterization thereof.

3. Defendant is without knowledge sufficient to form a belief with respect to the allegations of paragraphs V and VI of the complaint.

4. Defendant admits the allegations of paragraph VII of the complaint, except that defendant objects to the consideration of plaintiff's petition to the Commission for reconsideration (Exhibit C to complaint) except as evidence of the fact, which is admitted, that such petition was duly filed and was denied by the Commission, and that [fol. 66] plaintiff's suit is therefore not premature under the provisions of Section 17(9) of the Interstate Commerce Act as amended (49 U. S. C. 17(9)).

5. Defendant denies the allegations of paragraphs VIII, IX, and X of the complaint.

Wherefore, defendant prays that the relief prayed for by plaintiff be denied and that the complaint be dismissed, plaintiff to pay the costs.

(Signed) Edward Dumbauld, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

Wendell Berge, Assistant Attorney General; B. Howard Caughran, United States Attorney.

[fol. 67] I certify that copies of the foregoing answer were this day mailed to the following persons:

Bert Beasley, Esq., 108 East Washington Building, Indianapolis, Indiana;

Carson L. Taylor, Esq., William L. Hunter, Esq., 888 Union Station Building, Chicago 6, Illinois;

Nelson Thomas, Esq., Interstate Commerce Commission, Washington 25, D. C.;

Erle J. Zoll, Jr., Esq., 135 East Eleventh Place, Chicago 5, Illinois;

J. E. Marks, Esq., 145 East High Street, Lexington 4, Kentucky.

(Signed) Edward Dumbauld, Special Assistant to the Attorney General.

This 15th day of February, 1946.

[fol. 68] IN UNITED STATES DISTRICT COURT

No. 1072 Civil—No. 1076 Civil

ORDER GRANTING LEAVE TO INTERVENE—March 4, 1946

The intervention of the Interstate Commerce Commission as a party defendant herein being submitted to the Court, and the Court being fully advised in the premises,

It is ordered that the Interstate Commerce Commission be, and it is granted leave to intervene in the above entitled proceedings as a party defendant and to file its answer tendered with its intervention.

[fol. 69] IN UNITED STATES DISTRICT COURT

Civil Action No. 1072

[Title omitted]

INTERVENTION OF THE INTERSTATE COMMERCE COMMISSION

To the Honorable Judges of the Aforesaid Court:

This being a suit to set aside an order of the Interstate Commerce Commission, the undersigned, in accordance with the provisions of Section 212 of the Judicial Code, 36 Stat. 1150 (U. S. C., Supp. VI, Title 28, Sec. 45a), do hereby enter the appearance of the Interstate Commerce Commission as a party defendant and of ourselves as its counsel in the above-entitled suit, and pray that the attached answer be filed, and that said Commission be made a party defendant in said suit for all purposes.

(Signed) Daniel W. Knowlton, Chief Counsel.
(Signed) Nelson Thomas, Attorney for Interstate Commerce Commission.

Dated February 26, 1946.

[fol. 70] IN UNITED STATES DISTRICT COURT

Civil Action No. 1072

[Title omitted]

ANSWER OF INTERVENING DEFENDANT INTERSTATE COMMERCE COMMISSION—Filed March 4, 1946

Comes now the Interstate Commerce Commission, hereinafter called the Commission, intervening defendant herein, and for its answer to the complaint or petition filed in the above-entitled suit, respectfully shows:

1

Answering paragraphs I, II, III and IV of the complaint herein, the Commission admits that the allegations therein contained are true, except that the Commission denies that paragraph II of said complaint contains a full, true, or correct statement of the orders, records, proceedings, or rate schedules, referred to in said paragraph, and calls upon plaintiffs for strict proof thereof. The Commission further alleges and shows that it has no knowledge as to whether or not the certified copy of the record before the Commis-[fol. 71] sion in proceedings in I. & S. Docket No. 5139 and Docket No. 28881, which it is alleged in paragraph III aforesaid is lodged with the Clerk herein, is a full, true, or correct copy of the record in said proceedings.

2

Answering paragraphs V to XVII, inclusive, of said complaint, the Commission denies that its said report and order of July 9, 1945, Exhibits D and E, respectively, to said complaint, are illegal, arbitrary, unreasonable, beyond the Commission's power, or void, for any of the reasons alleged in said paragraphs, or for any other reasons; and the Commission denies that it erred in denying any petition of plaintiffs or any of them to reopen, rehear, or reconsider its decision and action in any proceeding mentioned in said paragraphs, or that any of its actions were in any respect erroneous or illegal.

3

Answering paragraph XVIII of said complaint, the Commission denies that its order referred to in said para-

graph will cause plaintiffs or any of them to sustain irreparable injury or any legal injury or damage whatever.

4

Further answering the complaint, the Commission alleges and shows that in its report and order of July 9, 1945, in its I. & S. proceeding No. 5139, *Coal to Beloit, Wis., and Northern Illinois,* together with its order in its Docket No. 28881, *Bituminous Coal Rates within Illinois,* embraced in its report in the first above-named proceeding, it established a fair, reasonable, non-discriminatory, non-preferential and non-prejudicial rate structure for shipments of coal from points in Illinois, Indiana and western Kentucky to consuming points in Illinois and Wisconsin; that said [fol. 72] report and orders were made in said proceedings, in which all interested parties, including the plaintiffs herein, were, and each of them was, accorded the full hearings required by law; that said proceedings were consolidated and heard upon a single record; that in said hearings a large volume of testimony and other evidence bearing upon the matter involved in said proceedings was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of the plaintiffs herein by their counsel; that in briefs filed in said proceedings all questions relating to the matters under consideration were argued fully and submitted to the Commission, including questions raised by the plaintiffs in this suit, and that thereupon the Commission determined the issues and entered and served upon all interested parties its report and orders aforesaid; that the findings and conclusions set out in said report and in its said orders were, and each of them was and is, fully supported by the evidence. The Commission denies that its said report and orders, or either of them, was made either arbitrarily or unjustly or contrary to the relevant evidence, or without sufficient findings, or upon evidence insufficient to support them, and that in making its said report and orders the Commission alleges that it did not exceed its authority or act contrary to law, and denies each of and all the allegations in the complaint herein to the contrary.

Except as herein expressly admitted, the Commission denies each of and all the allegations contained in the complaint herein, especially in so far as they are in conflict with

any allegation of this answer or with any statement, finding, determination or conclusion made or stated by the Commission in its report and orders of July 9, 1945.

[fol. 73] Wherefore the Commission prays that the complaint herein be dismissed.

Interstate Commerce Commission, by (Signed) Nelson Thomas, Attorney.

(Signed) Daniel W. Knowlton, Chief Counsel, of Counsel.

Duly sworn to by Claude R. Porter. Jurat omitted in printing.

[fol. 74] Certificate of Service

I hereby certify that I have this day mailed a copy of the within Intervention and Answer to each of the following named persons:

B. Howard Caughran, Esq., United States Attorney, Indianapolis, Ind.

Edward Dumbauld, Esq., Special Assistant to the Attorney General, Department of Justice, Washington 25, D. C.

Burt Beasley, Esq., 108 East Washington Building, Indianapolis, Ind.

Messrs. Carlson L. Taylor and William M. Hunter, 888 Union Station Building, Chicago 6, Ill.

Messrs. Dailey, Davis, Hartsock and Baltzell, 1100 Hume-Mansur Building, Indianapolis 4, Ind.

Messrs. Gallagher, Rinaker, Wilkinson and Hall, 231 So. La Salle Street, Chicago 4, Ill.

Earle J. Zoll, Jr., Esq., Commerce Attorney, Illinois Central Railroad Company, 135 East 11th Place, Chicago 5, Ill.

A. J. Dixon, Esq., Commerce Counsel, Southern Railway Company, P. O. Box 1808, Washington, D. C.

Charles W. Stidell, Esq., 307 No. Michigan Avenue, Chicago, Ill.

M. B. Holifield, Esq., Assistant Attorney General, Frankfort, Ky.

J. E. Marks, Esq., 145 East High St., Lexington 4, Ky.

(S.) Nelson Thomas, Attorney.

Feb. 26, 1946.

[fol. 75] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

INTERVENTION OF THE INTERSTATE COMMERCE COMMISSION

To the Honorable Judges of the Aforesaid Court:

This being a suit to set aside an order of the Interstate Commerce Commission, the undersigned, in accordance with the provisions of Section 212 of the Judicial Code, 36 Stat. 1150 (U. S. C., Supp. VI, Title 28, Sec. 45a), do hereby enter the appearance of the Interstate Commerce Commission as a party defendant and of ourselves as its counsel in the above-entitled suit, and pray that the attached answer be filed, and that said Commission be made a party defendant in said suit for all purposes.

(Signed) Daniel W. Knowlton, Chief Counsel; Nelson Thomas, Attorney, for Interstate Commerce Commission.

Dated February —, 1946.

[fol. 76] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

ANSWER OF INTERVENING DEFENDANT INTERSTATE COMMERCE COMMISSION—Filed March 4, 1946

Comes now the Interstate Commerce Commission, hereinafter called the Commission, intervening defendant herein, and for its answer to the complaint or petition filed herein in the above-entitled suit, respectfully shows:

1

Answering paragraphs I, II, III, IV and VII of the complaint, the Commission admits the allegations therein contained, and the Commission alleges and shows that while as stated in the second subparagraph of Paragraph IV of the complaint the plaintiff in its tariffs filed to be effective

August 2, 1942, proposed no change in its rates to Beloit from mines on its railroad, said rates were restated and reestablished in said tariff schedules and rates between said points were and are an essential part of the proper rate structure governing rates on coal produced in Illinois, [fol. 77] Indiana and western Kentucky; and the Commission further alleges and shows that the effective date of the Commission's order of July 9, 1945, has been further extended beyond February 8, 1946, as alleged in the third subparagraph of paragraph IV of the complaint, to April 8, 1946.

2

Answering the allegations of paragraph V of the complaint, the Commission admits that coal from some mines in the Brazil and Linton, Ind., groups, which are the most northerly of the mining districts in Indiana, can move over a direct single-line route of the plaintiff's lines to Rockford, Ill., and other Illinois destinations, and to Beloit, Wis., and that coal produced from mines in the Brazil and Linton coal-mining groups on plaintiff's railroad is in competition with coal produced in the various mining groups in Illinois, but the Commission denies the allegations of the first subparagraph of said paragraph V that the quality of the Illinois coal as compared with that from Indiana mines along the plaintiff's railroad is such that the Indiana coal will not sell at northern Illinois points and at Beloit, Wis., under the rate schedules required to be established by the Commission's order of July 9, 1945; the Commission further denies that as alleged in the third subparagraph of said paragraph V, the effect of the reduction of Illinois state rates between August 20, 1930 and April 22, 1934, was "the practical elimination of the use of Indiana coal from the Brazil and Linton districts at Rockford". Further answering the allegations of the said third subparagraph, the Commission alleges and shows that while it found that distances and transportation conditions required, in general, the same rate base for rates from the Brazil group to Rockford and Beloit as for rates from the Springfield, Ill., [fol. 78] district to those points, it lawfully found different rates to be proper from the respective districts, upon consideration and comparison of not merely these two sets of rates, but of rates from all Illinois, Indiana and western Kentucky groups to all of the numerous northern Illinois destinations involved in the proceeding and Beloit.

3

Answering paragraph VI of the complaint, the Commission admits that plaintiff's railroad carries a considerable amount of coal from mines in the Indiana coal districts referred to in said paragraph VI and that it derives some profit from said operations, but the Commission alleges and shows that in establishing the rate structure prescribed in its report and order of July 9, 1945, it gave full and careful consideration to the probable effect of the same upon the revenues of the respective railroads, including that of the plaintiff, and concluded that the rate structure required to be established by it will not deprive plaintiff or any other railroad of any business, revenue, or profit to which, under all existing circumstances and conditions, it is lawfully entitled.

4

Answering paragraph VIII of the complaint, the Commission denies that its order entered in I. & S. Docket No. 5139, on July 9, 1945, together with its report, is in whole or in part null or void, or that the Commission misconstrued the law, erred or acted beyond its powers in entering said report and order, for the reasons set out in said paragraph VIII, or any of them, or for any other reason whatsoever.

5

Answering paragraphs IX and X of the complaint, the Commission denies each of and all the allegations therein contained.

[fol. 79]

6

Further answering the complaint, the Commission alleges and shows that in its report and order of July 9, 1945, in its I. & S. proceeding No. 5139, *Coal to Beloit, Wis., and Northern Illinois*, together with its order in its Docket No. 28881, *Bituminous Coal Rates within Illinois*, embraced in its report in the first above-named proceeding, it established a fair, reasonable, non-discriminatory, non-preferential, and non-prejudicial rate structure for shipments of coal from points in Illinois, Indiana, and western Kentucky to consuming points in Illinois and Wisconsin; that said report and orders were made in said proceedings to which all interested parties, including the plaintiff herein, were,

and each of them was, accorded the full hearings required by law; that said proceedings were consolidated and heard upon a single record; that in said hearings a large volume of testimony and other evidence bearing upon the matters involved in said proceedings was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of the plaintiff herein by its counsel; that in briefs filed in said proceedings all questions relating to the matters under consideration were argued fully and submitted to the Commission, including questions raised by the plaintiff in this suit, and that thereupon the Commission determined the issues and entered and served upon all interested parties its report and orders aforesaid; that the findings and conclusions set out in said report and in its said orders were, and each of them was and is, fully supported by the evidence. The Commission denies that its said report and orders, or either of them, was made either arbitrarily or unjustly or contrary to the relevant evidence, or without sufficient findings, or upon evidence insufficient to support them, and that in making its said report and orders the Commission alleges that it did [fol. 80] not exceed its authority or act contrary to law, and denies each of and all the allegations in the complaint herein to the contrary.

Except as herein expressly admitted, the Commission denies each of and all the allegations contained in the complaint herein, especially in so far as they are in conflict with any allegation of this answer or with any statement, finding, determination or conclusion made or stated by the Commission in its report and orders of July 9, 1945.

Wherefore the Commission prays that the complaint herein be dismissed.

Interstate Commerce Commission, By (Signed) Nelson Thomas, Attorney. (Signed) Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 81] City of Washington,
District of Columbia, ss:

Claude R. Porter, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, intervening defendant in the above-entitled case, and makes this affidavit on behalf of the said Commission; that he has

read the foregoing answer and knows the contents thereof, and that the same is true.

(Signed) Claude R. Porter.

Subscribed and sworn to before the undersigned, a Notary Public in and for the District of Columbia, this 26th day of February, 1946. (Signed) J. Forney Donaldson, Notary Public. (Seal.) My Commission expires September 14, 1948.

[fols. 82-83] CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed a copy of the within Intervention and Answer to each of the following named persons:

B. Howard Caughran, Esq., United States Attorney, Indianapolis, Ind.

Edward Dumbauld, Esq., Special Assistant to the Attorney General, Department of Justice, Washington 25, D. C.

Burt Beasley, Esq., 108 East Washington Building, Indianapolis, Ind.

Messrs. Carlson L. Taylor and William M. Hunter, 888 Union Station Building, Chicago 6, Ill.

Messrs. Dailey, Davis, Hartsock and Baltzell, 1100 Hume-Mansur Building, Indianapolis 4, Ind.

Messrs. Gallagher, Rinaker, Wilkinson and Hall, 231 So. La Salle Street, Chicago 4, Ill.

Earle J. Zoll, Jr., Esq., Commerce Attorney, Illinois Central Railroad Company, 135 East 11th Place, Chicago 5, Ill.

A. J. Dixon, Esq., Commerce Counsel, Southern Railway Company, P. O. Box 1808, Washington, D. C.

Charles W. Stidell, Esq., 307 No. Michigan Avenue, Chicago, Ill.

M. B. Holifield, Esq., Assistant Attorney General, Frankfort, Ky.

J. E. Marks, Esq., 145 East High St., Lexington 4, Ky.

(S.) Nelson Thomas, Attorney.

February 26, 1946.

[fol. 84] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1072

MOTION FOR LEAVE TO INTERVENE AS PARTIES DEFENDANT—Filed March 8, 1946

Come now Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau, Applicants for Intervention, by their Attorney, Charles W. Stadell, and, pursuant to Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code), move the Court to enter an order permitting them to intervene as parties defendant in the above-entitled proceeding, and to file instanter their petition in intervention, copy of which is attached hereto.

The grounds upon which Applicants rely in support of this motion are set forth in said petition.

(Signed) Charles W. Stadell, 307 North Michigan Avenue, Chicago 1, Illinois, Attorney for Applicants for Intervention.

[fol. 85] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1076

MOTION FOR LEAVE TO INTERVENE AS PARTIES DEFENDANT—Filed March 8, 1946

Come now Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau, Applicants for Intervention, by their Attorney, Charles W. Stadell, and, pursuant to Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code), move the Court to enter an order permitting them to intervene as parties defendant in the above-entitled proceeding, and to file instanter their petition in intervention, copy of which is attached hereto.

The grounds upon which Applicants rely in support of this motion are set forth in said petition.

(Signed) Charles W. Stadell, 307 North Michigan Avenue, Chicago 1, Illinois, Attorney for Applicants for Intervention.

[fol. 86] In United States District Court

No. 1072 Civil—No. 1076 Civil

Order Granting Leave to Intervene—March 8, 1946

This cause coming on to be heard on the motion of the above-named Applicants for leave to intervene as parties defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicants should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, That Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau, Inc., and they hereby are, granted leave to intervene in the above-entitled proceeding as parties defendant and to file instanter their petition in intervention therein, and

It Is Further Ordered, that the attorney for Applicants shall give notice of the entry of this order, and at the time of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Commission, the United States District Attorney for the Southern District of Indiana, and the attorneys for the plaintiffs and intervenors herein.

[fol. 87] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1072

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed March 8, 1946

Come now Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau, by their Attorney, Charles W. Stadell, Applicants for Intervention in the above-entitled proceeding, and for grounds of their proposed intervention as parties defendant respectfully state:

I

That the above-entitled proceeding was commenced in this Court by the Ayrshire Collieries Corporation, a corporation, et al., original petitioners, by the filing of a petition on December 21, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By said order, [fol. 88] as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines, in the midwestern coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau are voluntary associations

composed of corporations, firms, and individuals which own and operate bituminous coal mines in the Central Illinois, DuQuoin, Centralia, and Southern Illinois districts, all in the state of Illinois. The coal producing companies comprising the membership of the above named Applicants collectively produce approximately 45 percent of the bituminous coal that is produced in the state of Illinois by mines served by carriers by rail. That Applicants were each authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and they did intervene and actively participate in said proceedings before such Commission. The specific finding respecting the freight rates on bituminous coal from the mines in the Central Illinois, DuQuoin, Centralia, and Southern Illinois districts to the destination territory involved are set forth at numerous places in the Commission's report of July 9, 1945.

[fol. 89] IV

That the coal mining companies, members of the Applicants herein, market or endeavor to market a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission; that their ability to market their products at such destinations in competition with producers of coal whose mines are located in the state of Indiana, depend in a substantial measure upon the establishment and maintenance of reasonable and otherwise lawful freight rates and upon reasonable and nondiscriminatory freight rate relationships on coal from their mines and from the mines in Indiana to such destinations, and that Applicants' members will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission in its said report and order of July 9, 1945, and will be irreparably damaged if said order is enjoined, set aside, annulled, or suspended, as sought by petitioners.

Wherefore, Applicants, in accordance with the provisions of Section 45a of Title 28, of the United States Code, pray the Court for leave to intervene as parties defendant in opposition to the petition filed by the Ayrshire Collieries Corporation, a corporation, et al., in the above-entitled proceeding.

(Signed) Charles W. Stadell, 307 North Michigan Avenue, Chicago 1, Illinois, Attorney for Applicants for Intervention.

[fol. 90] *Duly sworn to by Henry C. Woods. Jurat omitted in printing.*

[fol. 91] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1076

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed March 8, 1946

Come now Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau, by their Attorney, Charles W. Stadell, Applicants for Intervention in the above-entitled proceeding, and for grounds of their proposed intervention as parties defendant respectfully state:

I

That the above-entitled proceeding was commenced in this Court by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, original petitioner, by the filing of a petition, on December 27, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By said order, [fol. 92] as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines, in the midwestern coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau are voluntary associations composed of corporations, firms, and individuals which own and operate bituminous coal mines in the Central Illinois, DuQuoin, Centralia, and Southern Illinois districts, all in the state of Illinois. The coal producing companies comprising the membership of the above named Applicants collectively produce approximately 45 percent of the bituminous coal that is produced in the state of Illinois by mines served by carriers by rail. That Applicants were each authorized by the Interstate Commerce Commission to Intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and they did intervene and actively participate in said proceedings before such Commission. The specific finding- respecting the freight rates on bituminous coal from the mines in the Central Illinois, DuQuoin, Centralia, and Southern Illinois districts to the destination territory involved are set forth at numerous places in the Commission's report of July 9, 1945.

[fol. 93] IV

That the coal mining companies, members of the Applicants herein, market or endeavor to market a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission; that their ability to market their products at such destinations in competition with producers of coal whose mines are located in the state of Indiana, depend- in a substantial measure upon the establishment and maintenance of reasonable and otherwise lawful freight rates and upon reasonable and nondiscriminatory freight rate relationships on coal from their mines and from the mines in Indiana to such destinations, and that Applicants' members will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission in its said report and order of July 9, 1945, and will be irreparably damaged if said order is enjoined, set aside, annulled, or suspended, as sought by petitioners.

Wherefore, Applicants, in accordance with the provisions of Section 45a of Title 28, of the United States Code, pray the Court for leave to intervene as parties defendant in

opposition to the petition filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the above-entitled proceeding.

(Signed) Charles W. Stadell, 307 North Michigan Avenue, Chicago 1, Illinois, Attorney for Applicants for Intervention.

[fol. 94] *Duly sworn to by Henry C. Woods. Jurat omitted in printing.*

[fols. 95-96] In United States District Court

No. 1072 Civil—No. 1076 Civil

Order Reassigning Cause—March 21, 1946

It is ordered by the Court that the trial date in the above entitled cause be, and the same is, hereby vacated, and that this cause be, and the same is, hereby reassigned for trial to Monday, April 22, 1946, at 10:00 A. M.

[fol. 97] In United States District Court

[Title omitted]

Civil Action No. 1072

Motion for Leave to Intervene—Filed March 26, 1946

Come now Tecumseh Coal Company, Sunlight Coal Company and Northern Illinois Coal Corporation, Indiana and Illinois Corporations, by their Attorneys, Barnes, Hickman, Pantzer & Boyd, of Indianapolis, Indiana, and Clarence B. Cardy, of Chicago, Illinois, Applicants for Intervention, and, pursuant to Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code), move the Court to enter an order permitting them to intervene as parties defendant in the above-entitled proceeding, and to file instanter their petition in intervention, copy of which is attached hereto.

(S.) Thomas M. Scanlon. Barnes, Hickman, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis 4, Indiana. Clarence B. Cardy, 643 West 70th Street, Chicago 21, Illinois, Attorneys for Applicants for Intervention.

[fol. 98] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1076

MOTION FOR LEAVE TO INTERVENE—Filed March 26, 1946

Come now Tecumseh Coal Company, Sunlight Coal Company and Northern Illinois Coal Corporations, Indiana and Illinois Corporations, by their Attorneys, Barnes, Hickman, Pantzer & Boyd, of Indianapolis, Indiana, and Clarence B. Cardy, of Chicago, Illinois, Applicants for Intervention, and, pursuant to Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code), move the Court to enter an order permitting them to intervene as parties defendant in the above-entitled proceeding, and to file instanter their petition in intervention, copy of which is attached hereto.

(S). Thomas M. Scanlon. Barnes, Hickman, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis 4, Indiana. Clarence B. Cardy, 643 West 70th Street, Chicago 21, Illinois, Attorneys for Applicants for Intervention.

[fol. 99] IN UNITED STATES DISTRICT COURT

No. 1072 Civil—No. 1076 Civil

ORDER GRANTING LEAVE TO INTERVENE—March 26, 1946

This cause coming on to be heard on the motion of the above-named Applicants for leave to intervene as parties defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicants should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, That Tecumseh Coal Company, Sunlight Coal Company and Northern Illinois Coal Corporation, Indiana and Illinois Corporations, be, and they hereby are, granted leave to intervene in the above entitled proceeding as parties defendant and to file instanter their petition in intervention therein.

[fol. 100] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1072

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed March 26, 1946

Come now Tecumseh Coal Company, Sunlight Coal Company and Northern Illinois Coal Corporation, Indiana and Illinois Corporations, by their Attorneys, Barnes, Hickman, Pantzer & Boyd, of Indianapolis, Indiana, and Clarence B. Cardy, of Chicago, Illinois, Applicants for Intervention in the above-entitled proceeding, and for grounds of their proposed intervention as parties defendant respectfully state:

I

That the above-entitled proceeding was commenced in this Court by the Ayrshire Collieries Corporation; a corporation, et al., original petitioners, by the filing of a petition on December 21, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois." By said order, as amended, the respondent railroads are required to estab-[fol. 101] lish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines, in the midwestern coal field, including mines in western Kentucky, to destinations in Northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That the Tecumseh Coal Company is an Indiana Corporation, owning and operating a coal mine at Tecumseh, In-

diana, located in the Princeton-Ayrshire Coal Freight Rate Group; that the Sunlight Coal Company is an Indiana Corporation, owning and operating a coal mine at Boonville, Indiana, located in the Boonville Coal Freight Rate Group; and that the Northern Illinois Coal Corporation, is an Illinois Corporation, owning and operating a coal mine at Wilmington, Illinois, located in the Northern Illinois Coal Freight Rate Group. That Applicants were each authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois," and they did intervene and actively participate in said proceedings before such Commission. The specific finding- respecting the freight rates on bituminous coal from the mines in said Coal Freight Rate Groups to the destination territory involved are set forth at numerous places in the Commission's report of July 9, 1945.

[fol. 102] That said coal mining companies, market or endeavor to market a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission; that their ability to market their products at such destinations in competition with producers of coal whose mines are located in the States of Indiana and Illinois, depend- in a substantial measure upon the establishment and maintenance of reasonable and otherwise lawful freight rates and upon reasonable and nondiscriminatory freight rate relationships on coal from their mines and from the mines in Indiana to such destinations, and that Applicants will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission in its said report and order of July 9, 1945, and will be irreparably damaged if said order is enjoined, set aside, annulled, or suspended, as sought by petitioner.

Wherefore, Applicants, in accordance with the provisions of Section 45a of Title 28, of the United States Code, pray the Court for leave to intervene as parties defendant in opposition to the petition filed by the Ayrshire Collieries Corporation, a Corporation, et al., in the above-entitled proceeding.

(S). Thomas M. Scanlon. Barnes, Hickman, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis 4, Indiana. Clarence B. Cardy, 643 West 70th Street, Chicago 21, Illinois, Attorneys for Applicants for Intervention.

[fol. 103] *Duly sworn to by Robert H. May. Jurat omitted in printing.*

[fol. 104] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1076

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed March 26, 1946

Come now Tecumseh Coal Company, Sunlight Coal Company and Northern Illinois Coal Corporations, Indiana and Illinois Corporations, by their Attorneys, Barnes, Hickman, Pantzer & Boyd, of Indianapolis, Indiana, and Clarence B. Cardy, of Chicago, Illinois, Applicants for Intervention in the above-entitled proceeding, and for grounds of their proposed intervention as parties defendant respectfully state:

I

That the above-entitled proceeding was commenced in this Court by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, original petitioner, by the filing of a petition, on December 27, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois." By said order, [fol. 105] as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines, in the midwestern coal field, including mines in western Kentucky, to destinations in Northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and

be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That the Tecumseh Coal Company is an Indiana Corporation, owning and operating a coal mine at Tecumseh, Indiana, located in the Princeton-Ay-shire Coal Freight Rate Group; that the Sunlight Coal Company is an Indiana Corporation, owning and operating a coal mine at Boonville, Indiana, located in the Boonville Coal Freight Rate Group; and that the Northern Illinois Coal Corporation, is an Illinois Corporation, owning and operating a coal mine at Wilmington, Illinois, located in the Northern Illinois Coal Freight Rate Group. That Applicants were each authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois," and they did intervene and actively participate in said proceedings before such Commission. The specific finding- respecting the freight rates on bituminous coal from the mines in said Coal Freight Rate Groups to the destination territory involved are set forth at numerous places in the Commission's report of July 9, 1945.

[fol. 106]

IV

That said coal mining companies, market or endeavor to market a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission; that their ability to market their products at such destinations in competition with producers of coal whose mines are located in the States of Indiana and Illinois, depend- in a substantial measure upon the establishment and maintenance of reasonable and otherwise lawful freight rates and upon reasonable and nondiscriminatory freight rate relationships on coal from their mines and from the mines in Indiana to such destinations, and that Applicants will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission in its said report and order of July 9, 1945, and will be irreparably damaged if said order is enjoined, set aside, annulled, or suspended, as sought by petitioner.

Wherefore, Applicants, in accordance with the provisions of Section 45a of Title 28, of the United States Code, pray the Court for leave to intervene as parties defendants in

opposition to the petition filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the above-entitled proceeding.

(S). Thomas M. Scanlon. Barnes, Hickman, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis 4, Indiana. Clarence B. Cardy, 643 West 70th Street, Chicago 21, Illinois, Attorneys for Applicants for Intervention.

[fols. 107-108] *Duly sworn to by Robert H. May. Jurat omitted in printing.*

[fol. 109] Copy

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Titles omitted]

Civil No. 1072. Civil No. 1076

ANSWER OF INTERVENING DEFENDANTS, RAILROAD COMMISSION OF KENTUCKY, AND KENTUCKY COAL AGENCY, INCORPORATED —Filed March 30, 1946

Come now Railroad Commission of Kentucky and Kentucky Coal Agency, Incorporated, hereinafter called the Kentucky interests, intervening defendants herein, and file this their joint and several answer to the complaint or petitions in the above entitled cases:

[fols. 110-111] I

The Kentucky interests hereby adopt the answers filed herein on behalf of the United States of America, the defendant in said cases, as their answer in the same manner and to the same extent as though each paragraph thereof were herein fully set out.

II

In further answer, the Kentucky interests specifically deny the allegations contained in Paragraphs V through XVIII, both inclusive, of the petition in Case No. 1072, and they also specifically deny the allegations contained in Paragraph XIII, IX and X of the petition in Case No. 1076,

in so far as said allegations relate to matters of fact and the Kentucky interests disagree with the conclusions of law and opinions of the pleaders set forth in said paragraphs.

Wherefore, the Kentucky interests pray that the petitions in these cases be dismissed.

Railroad Commission of Kentucky, by (S.) Eldon S. Dummit, Attorney General of Kentucky. M. B. Holifield, Assistant Attorney General of Kentucky, State Capitol, Frankfort, Kentucky.

Kentucky Coal Agency, Incorporated, by (S.) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Attorney.

J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Of Counsel.

March 25, 1946.

[fol. 112] In the United States District Court

[Title omitted]

Civil Action. No. 1072

Motion for Leave to Intervene as Parties Defendant—Filed April 12, 1946

Come now Belleville Fuels, Incorporated and Fifth and Ninth Districts Coal Traffic Bureau, Applicants for Intervention, by their Attorney, Richard F. Wood, and, pursuant to Section 45a of Title 28 of the United States Code (Sections 212 and 213 of the Judicial Code), move the Court to enter an order permitting them to intervene as parties defendant in the above-entitled proceeding, and to file instanter their petition in intervention, copy of which is attached hereto.

The grounds upon which Applicants rely in support of this motion are set forth in said petition.

(Signed) Richard F. Wood, 407 N. Eighth Street, St. Louis 1, Missouri, Attorney for Applicants for Intervention.

[fol. 113] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1076

MOTION FOR LEAVE TO INTERVENE AS PARTIES DEFENDANT—Filed April 12, 1946

Come now Belleville Fuels, Incorporated and Fifth and Ninth Districts Coal Traffic Bureau, Applicants for Intervention, by their Attorney, Richard F. Wood, and, pursuant to Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code), move the Court to enter an order permitting them to intervene as parties defendant in the above-entitled proceeding, and to file instanter their petition in intervention, copy of which is attached hereto.

The grounds upon which Applicants rely in support of this motion are set forth in said petition.

(Signed) Richard F. Wood, 407 N. Eighth Street, St. Louis 1, Missouri, Attorney for Applicants for Intervention.

[fol. 114] IN UNITED STATES DISTRICT COURT

No. 1072 Civil—No. 1076 Civil

ORDER GRANTING LEAVE TO INTERVENE—April 12, 1946

This cause coming on to be heard on the motion of the above-named Applicants for leave to intervene as parties defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicants should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, That Belleville Fuels, Incorporated and Fifth and Ninth Districts Coal Traffic Bureau, be, and they hereby are, granted leave to intervene in the above-entitled proceeding as parties defendant and to file instanter their petition in intervention therein, and

It Is Further Ordered, that the Attorney for Applicants shall give notice of the entry of this order, and at the time of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order

and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Commission, the United States District Attorney for the Southern District of Indiana, and the Attorneys for the plaintiffs and intervenors herein.

[fol. 115] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1072

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed April 12, 1946

Come now Belleville Fuels, Incorporated and Fifth and Ninth Districts Coal Traffic Bureau, by their Attorney, Richard F. Wood, Applicants for Intervention in the above-entitled proceeding, and for grounds of their proposed intervention as parties defendant respectfully state:

I

That the above-entitled proceeding was commenced in this Court by the Ayrshire Collieries Corporation, a corporation, et al., original petitioners, by the filing of a petition on December 21, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois." By said order, as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines, in the midwestern coal field, including mines in western Kentucky, to destina-
[fol. 116] tions in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear

as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Belleville Fuels, Incorporated, is a Corporation organized under the laws of the state of Delaware and represents corporations, firms, and individuals which own and operate bituminous coal mines in the Belleville and DuQuoin districts in the state of Illinois. Fifth and Ninth Districts Coal Traffic Bureau is a voluntary association of corporations, firms and individuals which own and operate bituminous coal mines in the Belleville and DuQuoin districts in the state of Illinois. The coal producing companies comprising the membership of the above named Applicants collectively produce approximately seven million tons of bituminous coal annually. That Applicants were each authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois," and they did intervene and actively participated in said proceedings before such Commission. The specific finding- respecting the freight rates on bituminous coal from the mines in the DuQuoin and Belleville districts to the destination territory involved are set forth at numerous places in the Commission's report of July 9, 1945.

IV

That the coal mining companies, members of the Applicants herein, market or endeavor to market a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission; that their ability to market their products at such destinations in competition with producers of coal whose mines are located in the state of Indiana, depends in a substantial measure upon the establishment and maintenance of reasonable and otherwise lawful freight rates and upon reasonable and nondiscriminatory freight rate relationships on coal from their mines and from the mines in Indiana to such destinations, and that [fol. 117] Applicants' mer bers will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission in its said report and order of July 9, 1945, and will be irreparably damaged if said order is enjoined, set aside, annulled, or suspended, as sought by petitioners.

Wherefore, Applicants, in accordance with the provisions of Section 45a of Title 28, of the United States Code, pray the Court for leave to intervene as parties defendant in opposition to the petition filed by the Ayrshire Collieries Corporation, a corporation, et al., in the above-entitled proceeding.

(Signed) Richard F. Wood, 407 N. Eighth Street, St. Louis 1, Missouri, Attorney for Applicants for Intervention.

Duly sworn to by Harold F. Cholet. Jurat omitted in printing.

[fol. 118] In United States District Court

[Title omitted]

Civil Action No. 1076

Petition for Leave to Intervene as Defendants—Filed April 12, 1946

Come now Belleville Fuels, Incorporated and Fifth and Ninth Districts Coal Traffic Bureau, by their Attorney, Richard F. Wood, Applicants for Intervention in the above-entitled proceeding, and for grounds of their proposed intervention as parties defendant respectfully state:

I

That the above-entitled proceeding was commenced in this Court by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, original petitioner, by the filing of a petition, on December 27, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois." By said [fol. 119] order, as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines, in the mid-western coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 43a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Belleville Fuels, Incorporated, is a Corporation organized under the laws of the state of Delaware and represents corporations, firms, and individuals which own and operate bituminous coal mines in the Belleville and DuQuoin districts in the state of Illinois. Fifth and Ninth Districts Coal Traffic Bureau is a voluntary association of corporations, firms and individuals which own and operate bituminous coal mines in the Belleville and DuQuoin districts in the state of Illinois. The coal producing companies comprising the membership of the above named Applicants collectively produce approximately seven million tons of bituminous coal annually. That Applicants were each authorized by the Interstate Commerce Commission, to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois," and they did intervene and actively participated in said proceedings before such Commission. The specific finding- respecting the freight rates on bituminous coal from the mines in the DuQuoin and Belleville districts to the destination territory involved are set forth at numerous places in the Commission's report of July 9, 1945.

IV

That the coal mining companies, members of the Applicants herein, market or endeavor to market a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission; that their ability to market their products at such destinations in competition with producers of coal whose mines are located in the state of Indiana, depends in a substantial measure upon the establishment and maintenance of reasonable and otherwise

lawful freight rates and upon reasonable and nondiscriminatory freight rate relationships on coal from their mines and from the mines in Indiana to such destinations, and [fol. 120] that Applicants' members will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission in its said report and order of July 9, 1945, and will be irreparably damaged if said order is enjoined, set aside, annulled, or suspended, as sought by petitioners.

Wherefore, Applicants, in accordance with the provisions of Section 45a of Title 28, of the United States Code, pray the Court for leave to intervene as parties defendant in opposition to the petition filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the above-entitled proceeding.

(Signed) Richard F. Wood, 407 N. Eighth Street, St. Louis 1, Missouri, Attorney for Applicants for Intervention.

Duly sworn to by Harold F. Cholet. Jurat omitted in printing.

[fol. 121] In United States District Court

[Title omitted]

No. 1072 Civil

Designation of Judge—Filed April 20, 1946

Public interest requiring, I hereby designate and assign the Honorable J. Earl Major, United States Circuit Judge in and for the Seventh Judicial Circuit, to sit as United States District Judge of the United States District Court for the Southern District of Indiana, and to sit as the said District Judge in said court to try or participate in the trial of the above entitled action now pending in said court.

(Signed) Evan A. Evans, Senior United States Circuit Judge in and for the Seventh Judicial Circuit.

Chicago, Illinois, April 17, 1946."

[fols. 122-123] IN UNITED STATES DISTRICT COURT

No. 1072 Civil—No. 1076 Civil

ORDER OF SUBMISSION—April 22, 1946

Come now the parties in each of the above entitled consolidated causes of action by their respective attorneys and now in open court, it is agreed by all of the parties that said consolidated causes of action be submitted for final hearing upon the plaintiffs' petitions for a permanent injunction before a three-judge court in the Court Room of the United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois.

The above entitled consolidated causes of action are now submitted in accordance with said agreement for final hearing upon the plaintiffs' petitions for a permanent injunction to a specially constituted court of three-judges as required by 28 U. S. C. A. 47 (38 Stat. 220) and the evidence being heard and concluded and the argument of counsel being heard, the Attorneys for the defendant, United States of America and the intervenor, Interstate Commerce Commission, now request and are given ten (10) days within which to file a brief herein.

The parties are given ten (10) days from and after this date within which to submit drafts of their suggested findings of fact and conclusions of law.

[fol. 124] DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

Civil Action No. 1072

AYRSHIRE COLLIERIES CORPORATION, et al., Plaintiffs,

v.

UNITED STATES, Defendant,

INTERSTATE COMMERCE COMMISSION, ET AL., Intervening Defendants.

Civil Action No. 1076

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, Plaintiff,

vs.

UNITED STATES, Defendant,

INTERSTATE COMMERCE COMMISSION, ET AL., Intervening Defendants.

Findings of Fact and Conclusions of Law—Filed June 5, 1946

The above-entitled causes coming on for final hearing on the merits before this duly constituted three-judge court [1] on April 22, 1946, upon the pleadings, evidence, arguments and briefs of counsel for the respective parties, the Court makes and enters its findings of fact and conclusions of law as follows:

Findings of Fact

1. Each of the plaintiffs in the first of the above-entitled cases is now, and at all times hereinafter mentioned has been, a corporation duly organized and existing under the laws of one or more of the States of the United States, or [fol. 125] an individual, and each of them now is, and at all

[1] Judge Evan A. Evans became ill subsequent to the hearing of these causes and he is and has been unable to participate in a determination thereof. The findings of fact, conclusions of law and judgment have therefore been entered by the remaining judges of such court.

times hereinafter mentioned has been, engaged in the operation of a coal mine or mines in the State of Indiana, except the plaintiff Coal Trade Association of Indiana, which is a voluntary association whose members are composed of the other plaintiffs in such action and certain other persons and corporations operating coal mines in Indiana.

2. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff in the second of the above-entitled actions, is a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin, and owns and operates lines of railroad in the States of Indiana, Illinois, Wisconsin, and certain other States, and is engaged in the transportation of property and persons for hire, both interstate and intrastate, as a common carrier by railroad, subject to the Interstate Commerce Act. It has its principal office at Chicago, Illinois.

3. Heretofore, on July 30, 1942, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and other carriers having filed with the Interstate Commerce Commission (hereafter called the Commission) certain tariffs containing schedules stating individual and joint rates and charges, and individual and joint regulations and practices affecting such rates and charges, governing the interstate transportation of coal from Illinois, Indiana, and western Kentucky, to Rockford and other destinations in northern Illinois, and to Beloit and other destinations in southern Wisconsin, the Commission, upon complaint of the plaintiff Coal Trade Association of Indiana, suspended the operation of said tariffs and entered upon an investigation as to the lawfulness of the rates, charges, regulations, and practices stated in those tariffs. This proceeding was designated by the Commission as *Investigation and Suspension Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois.*

4. Heretofore, on September 9, 1942, a petition having [fol. 126] been filed with the Commission, on behalf of the Alton Railroad Company and other common carriers by railroad operating in the State of Illinois, averring that the Illinois Commerce Commission required those carriers to maintain rates for application on coal moving by rail in intrastate commerce within the State of Illinois from producing points to Rockford, Freeport, Dixon and other destina-

tions north and west of Chicago in Illinois, which were less than those on interstate traffic and those railroads having alleged that the observance of them of the said intrastate rates caused and resulted in undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other, and undue, unreasonable and unjust discrimination against interstate commerce, the Commission entered upon an investigation as to the lawfulness of the said intrastate rates on coal. This investigation was designated by the Commission as *Docket No. 28881, Bituminous Coal Rates Within Illinois.*

5. As the rates involved in both proceedings related to the coal rate structure from Illinois, Indiana and western Kentucky, to northern Illinois and southern Wisconsin, the two investigation proceedings were consolidated for hearing and were heard together before examiners of the Commission. Evidence was adduced before the Commission by the plaintiffs in the above-entitled actions and others bearing upon the lawfulness of all the rates contained in the schedules under investigation, all of which has been adduced before this Court. A report covering both proceedings was proposed by an examiner of the Commission and exceptions were filed thereto by certain parties to the proceedings. Thereafter, on July 9, 1945, the Commission made and entered its report and order covering both proceedings, which report appears in 263 I. C. C. 179. These actions were brought to set aside the Commission's report and order dated July 9, 1945.

6. The Commission found that the present and proposed rates of the railroads were unlawful in certain respects, as [fol. 127] shown in the Commission's report dated July 9, 1945. Accordingly, pursuant to its authority under Section 15 of the Interstate Commerce Act, the Commission prescribed interstate and intrastate rates to be published and collected by the carriers for the transportation of coal between the points involved in such proceedings and fixed relationships between certain producing areas in Illinois, Indiana and western Kentucky in lieu of the existing and proposed rates and relationships as stated in the tariffs under investigation.

Conclusions of Law

1. This Court has jurisdiction of the parties and the subject matter of these actions.

2. The Commission's report and order dated July 9, 1945, were made within its statutory authority and are supported by adequate findings of fact.

3. The findings of the Commission as set forth in the report and order of July 9, 1945, have substantial support in the record made before the Commission and afford a rational basis for its conclusions.

4. The plaintiffs were afforded a full and fair hearing before the Commission and the record made before the Commission discloses no error of law.

5. The Commission's report and order are lawful and valid in all respects.

6. The plaintiffs' complaints should be dismissed.

(Signed.) J. Earl Major, United States Circuit Judge.
(Signed) Michael L. Igoe, United States District Judge.

Dated this 5th day of June, 1946.

[fols. 128-129] In United States District Court

No. 1072 Civil—No. 1076 Civil

Judgment—June 5, 1946

The above-entitled cause coming on, and the court having made and entered its findings of fact and conclusions of law therein,

Now Therefore, it is hereby ordered, adjudged and decreed that the plaintiffs' complaints be dismissed at their costs.

[fol. 130] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 1072 Civil. No. 1076 Civil

[Title omitted]

PETITION FOR APPEAL—Filed July 30, 1946

Ayrshire Collieries Corporation, a corporation, Big Ben Collieries, Inc., a corporation, Birch Creek Coal Company, Ind., a corporation, Blackfoot Coal & Land Corporation, a corporation, Blackhawk Coal Corporation, a corporation, Walter Bledsoe & Company, a corporation, Boonville Coal Sales Corporation, a corporation, Central Indiana Coal Company, Inc., a corporation, The Enos Coal Mining Company, a corporation, Glendora Coal Company, a corporation, Hickory Grove Coal Mining Corporation, a corporation, Ingle Coal Corporation, a corporation, Knox Consolidated Coal Corporation, a corporation, Linton Summit Coal Company, Inc., a corporation, Little Betty Mining Corporation, a corporation, Mariah Hill Super Block Coal Company, a corporation, The Maumee Collieries Company, a corporation, Princeton Mining Company, a corporation, Pyramid [fols. 131-132] Coal Corporation, a corporation, Sherwood-Templeton Coal Company, a corporation, Snow Hill Coal Corporation, a corporation, Standard Coal Company, a corporation, Paul E. Horton, doing business as Hill Coal Company, H. A. Siepman, doing business as H. A. Siepman Coal Company, and Coal Trade Association of Indiana, a voluntary association, plaintiffs in the above entitled cause No. 1072, and the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff in the above entitled cause No. 1076 (which said causes No. 1072 and No. 1076 by order of this court, had been consolidated for all purposes) feeling themselves aggrieved by the final decree of the District Court of the United States for the Southern District of Indiana, Indianapolis Division entered in said court of June 5th, 1946 in each of said causes which theretofore had been consolidated, jointly and severally pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein the said plaintiffs in each of said causes consider the decree erroneous, are set forth in the

assignment of errors accompanying this petition, to which reference is hereby made.

Said plaintiffs pray that a transcript of record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated July 29, 1946.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Plaintiffs in Cause No. 1072. Canon L. Taylor, William L. Hunter, Attorneys for Plaintiff in Cause No. 1076.

[fol. 133] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 1072 Civil. No. 1076 Civil

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 30, 1946

Now come Ayrshire Collieries Corporation, a corporation, Big Ben Collieries, Inc., a corporation, Birch Creek Coal Company, Inc., a corporation, Blackfoot Coal & Land Corporation, a corporation, Blackhawk Coal Corporation, a corporation, Walter Bledsoe & Company, a corporation, Boonville Coal Sales Corporation, a corporation, Central Indiana Coal Company, Inc., a corporation, The Enos Coal Mining Company, a corporation, Glendora Coal Company, a corporation, Hickory Grove Coal Mining Corporation, a corporation, Ingle Coal Corporation, a corporation, Knox Consolidated Coal Corporation, a corporation, Linton Summit Coal Company, Inc., a corporation, Little Betty Mining Corporation, a corporation, Mariah Hill Super Block Coal Company, a corporation, The Maumee Collieries Company, a corporation, Princeton Mining Company, a corporation, [fol. 134] Pyramid Coal Corporation, a corporation, Sherwood-Templeton Coal Company, a corporation, Snow Hill Coal Corporation, a corporation, Standard Coal Company, a corporation, Paul E. Horton, doing business as Hill Coal Company, H. A. Siepman, doing business as H. A. Siepman Coal Company, and Coal Trade Association of Indiana, a

voluntary association, plaintiffs in the above entitled cause No. 1072, and the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff in the above entitled cause No. 1076, by their respective counsel, and in connection with their appeals, file the following assignment of errors upon which plaintiffs in both causes will rely in the prosecution of their appeal to the Supreme Court of the United States from the final decree of this Court entered June 5, 1946.

The District Court erred:

(1) In holding and deciding that two of the judges of the statutory three judge court after hearing by the three judges, and thereafter one of the judges becoming ill and unable to participate further in the case, can determine the case and make findings of fact, and conclusions of law and enter a final decree dismissing said cases; where the statute (28 U. S. C. A. 47) provides that in proceedings of this character, the cause shall be heard and determined by a court of three judges of whom a majority shall concur in the judgment.

(2) In finding that on July 9, 1945, the Commission made and entered its order covering both proceedings, I. & S. Docket No. 5139, and Docket No. 28881; whereas said order of the Commission was entered only in I. & S. Docket No. 5139.

[fol. 135] (3) In finding that the Commission found that the present rates of the railroads were unlawful in certain respects, and in finding that the Commission pursuant to its statutory authority, under Section 15 of the Interstate Commerce Act prescribed interstate and intrastate rates to be published and collected by the carriers for the transportation of coal between the points involved in such proceedings and fixed relationships between certain producing areas in Illinois, Indiana and western Kentucky in lieu of the existing and proposed rates and relationships as stated in the tariffs under investigation;

Whereas the conclusion of the Commission that certain of the present rates from Indiana mines to certain Illinois destinations are unlawful is not supported by findings of fact or by evidence, and whereas the Commission did not prescribe any intrastate rates, or any interstate rates or rate relationships, but merely approved certain rates and

rate bases which it permitted the respondent carriers to publish if they so desired.

(4) In failing to hold and decide that the Commission entered no order for an investigation and hearing concerning the lawfulness of the existing rates on bituminous coal from mines in Indiana to Rockford or other destinations in northern Illinois or Beloit, Wisconsin;

(5) In failing to hold and decide that there is no evidence in the record before the Commission from which any comparisons can be made of the circumstances and conditions of transportation service involved in the transportation of coal from mines in the Brazil-Clinton and Linton-Sullivan groups in Indiana via the single line of the Chicago, Milwaukee, St. Paul & Pacific Railroad with the circumstances and conditions of the transportation service involved in the transportation of coal from mines on other railroads in those groups via joint line routes from such mines to said destinations, which rates the Commission concluded were [fol. 136] discriminatory in violation of Section 2 of the Interstate Commerce Act;

(6) In failing to hold and decide that there are no findings of fact in the Report of the Commission and no evidence that but for the lower single line rates of the Chicago, Milwaukee, St. Paul & Pacific Railroad, shipments of coal would have moved from mines on other roads in the Brazil-Clinton and Linton-Sullivan groups or any other groups in Indiana to Rockford, Freeport and other destinations in northern Illinois to which the Chicago, Milwaukee, St. Paul and Pacific Railroad maintains rates via its single line lower than the joint line rates maintained by other carriers serving origins in said groups;

(7) In failing to hold and decide that there are no findings of fact in the Report of the Commission and that there is no evidence in the record before the Commission that the Chicago, Milwaukee, St. Paul & Pacific Railroad effectively controls the rates to destinations in northern Illinois or Beloit, Wisconsin, from the mines served by other carriers in any Indiana group;

(8) In failing to hold and decide that there are no findings of fact in the Report of the Commission and no evidence in the record before the Commission that the rates published

by the Chicago, Milwaukee, St. Paul & Pacific Railroad from origins on its line in the Brazil-Clinton and Linton-Sullivan groups in Indiana accorded to said mines or shippers from such mines an undue preference or subjected any other shipper or mine in said groups or any receiver of freight at a destination on the line of the said Chicago, Milwaukee, St. Paul & Pacific Railroad in Illinois and undue prejudice or disadvantage;

(9) In failing to hold and decide that the Report of the Commission contains no finding of fact to support the conclusion that the rates approved in said Report to Rockford, Freeport or any specific destination in northern Illi-[fol. 137] nois are reasonable, non-discriminatory, non-prejudicial and non-preferential;

(10) In failing to hold and decide there are no findings of fact in the Report of the Commission and no evidence in the record before the Commission that the rates from the Boonville group in Indiana to any destination was unreasonable or that the rates from said Boonville group and the rates from the Princeton-Ayrshire group to any destination subject Boonville to an unjust discrimination or unduly prejudice the Boonville group or shippers therein or unduly prefer the Princeton-Ayrshire group and shippers therein;

(11) In failing to hold and decide that the order of the Interstate Commerce Commission in I. & S. Docket No. 5139 is unfair, arbitrary and discriminates against plaintiffs;

(12) In holding and deciding that the Commission's Report and Order entered July 9, 1945, were made within its statutory authority and are supported by adequate findings of fact;

(13) In holding and deciding that the findings of the Commission as set forth in the Report and Order of July 9, 1945, have substantial support in the record made before the Commission and afford a rational basis for its conclusions;

(14) In holding and deciding that the plaintiffs were accorded a full and fair hearing before the Commission and that the record made before the Commission discloses no error of law;

(15) In holding and deciding that the Report and Order of the Commission are lawful and valid in all respects;

(16) In dismissing plaintiffs' complaints.

(17) In failing to hold and decide that in I. & S. Docket No. 5139, a proceeding under Section 15(7) of the Inter-
[fol. 138] state Commerce Act, the Commission had no jurisdiction to make findings of fact or enter an order with respect to the relationship between the present rates of the Chicago, Milwaukee, St. Paul & Pacific Railroad via its direct line from origins on its line in the Brazil-Clinton and Linton-Sullivan groups to destinations on its line in Illinois, and the present rates of other carriers from other origins in said groups, or other Indiana groups to the same destinations in Illinois.

(18) In failing to hold and decide that in I. & S. Docket No. 5139 the Commission had no jurisdiction or authority to make any findings or enter any order with respect to the then present rates from mines in Indiana to destinations in Illinois, except as such existing rates might be affected indirectly by an order of the Commission in regard to the suspended rates, and that the Commission having ordered that such suspended rates be cancelled, it was without jurisdiction or authority to enter an order respecting the present rates from the Indiana mines to destinations in Illinois.

(19) In failing to hold and decide that the conclusion of the Commission that the existing rates from mines in Indiana to destinations in northern Illinois result in unjust discrimination as between shippers of coal transported in whole or in part by the Chicago, Milwaukee, St. Paul & Pacific Railroad or the Illinois Central Railroad, in violation of Section 2 of the Act, and in undue preference and prejudice as between the origins in the Brazil-Clinton and Linton-Sullivan districts and as between the respective Indiana districts, in violation of Section 3 (1) of the Act, and that the order to remove such alleged violations are not supported by findings of fact in the Report of the Commission or by substantial evidence in the record before the Commission;

[fol. 139] (20) In failing to hold and decide that the Southern Railway, having published no new rates from

points of origin in Indiana to Beloit, Wisconsin, and the Chicago, Milwaukee, St. Paul & Pacific Railroad, having published no new rates from points of origin served by it in Indiana via its line to Beloit, Wisconsin, the existing rates of said railroads were not in issue, and the Commission had no jurisdiction or authority in I. & S. Docket No. 5139 to make any finding with respect to said rates or with respect to the relation of the said rates and the proposed increased rates of other carriers serving mines in Indiana, or to enter any order respecting the said rates of the Southern Railway and the Chicago, Milwaukee, St. Paul & Pacific Railroad from Indiana origins to Beloit, Wisconsin;

(21) In failing to hold and decide that the Chicago, Milwaukee, St. Paul & Pacific Railroad and the Southern Railway had the right to initiate and maintain such rates as those carriers deemed proper until such time as the Commission found, after full hearing, on the basis of substantial evidence, that such rates violated one or more provisions of the Interstate Commerce Act and made such finding in a proceeding instituted by an order of the Commission for an investigation and hearing concerning the lawfulness of such rates;

(22) In failing to hold and decide that the Commission had no authority in I. & S. Docket No. 5139, on the evidence in that proceeding, to make any finding that the rates from the Boonville group should be on the same level as the rates from the Princeton-Ayrshire group in Indiana to any destination involved, or to approve such parity of rates;

(23) In failing to hold and decide that the Commission had no authority to approve rates or rate relationships from a number of origin groups to a number of individual destinations, where such rates vary from destination to [fols. 140-141] destination and the relationships of the rates from the different origin groups vary as between such destinations, on the basis of the average of the rates from each group to all of the destinations;

(24) In failing to hold and decide that the order of the Interstate Commerce Commission of July 9th, 1945 is not supported to basic or essential findings of the Commission, and is without rational support in the report of the Commission.

(25) In failing to hold and decide that the order of the Interstate Commerce Commission of July 9th, 1945 is in excess of the Commission's statutory powers and contrary to the provisions of the Interstate Commerce Act.

(26) In failing to enter a decree perpetually enjoining the order of the Interstate Commerce Commission in so far as such order requires the carriers to change the existing rates from mines in Indiana to destinations in Illinois, and n so far as said order authorizes and permits the carriers serving mines in Indiana to establish rates on the bases of the rates approved by the Commission.

Dated July 29, 1946.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Plaintiffs in Civil Action No. 1072. Carson L. Taylor, William L. Hunter, Attorneys for Plaintiff in Civil Action No. 1076.

[fols. 142-150] In United States District Court

No. 1072 Civil—No. 1076 Civil

Order Allowing Appeal—August 1, 1946

In the above entitled causes the Ayrshire Collieries Corporation, a corporation, Big Ben Collieries, Inc., a corporation, Birch Creek Coal Company, Inc., a corporation, Blackfoot Coal & Land Corporation, a corporation, Blackhawk Coal Corporation, a corporation, Walter Bledsoe & Company, a corporation, Boonville Coal Sales Corporation, a corporation, Central Indiana Coal Company, Inc., a corporation, The Enos Coal Mining Company, a corporation, Glendora Coal Company, a corporation, Hickory Grove Coal Mining Corporation, a corporation, Ingle Coal Corporation, a corporation, Knox Consolidated Coal Corporation, a corporation, Linton Summit Coal Company, Inc., a corporation, Little Betty Mining Corporation, a corporation, Mariah Hill Super Block Coal Company, a corporation, The Maumee Collieries Company, a corporation, Princeton Mining Company, a corporation, Pyramid Coal Corporation, a corporation, Sherwood-Templeton Coal Company, a corporation, Snow Hill Coal Corporation, a corporation, Standard Coal Company, a corporation, Paul

E. Horton, doing business as Hill Coal Company, H. A. Siepman, doing business as H. A. Siepman Coal Company, and Coal Trade Association of Indiana, a voluntary association, plaintiffs in the above entitled Cause No. 1072, and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff in the above entitled cause No. 1076, which said causes had been consolidated for all purposes by an order of this Court, having made and filed their petition jointly and severally, praying an appeal to the Supreme Court of the United States from the final decree of this Court in said causes entered June 5th, 1946, and having also made and filed an assignment of errors and a statement [fol. 151] of jurisdiction, and having in all respects conformed to the statute and rules of Court in such case made and provided, it is

Ordered and Decreed that the appeals be, and the same are hereby, allowed as prayed for, upon plaintiffs in cause No. 1072 giving bond for costs in the amount of $500.00, and plaintiff in cause No. 1076 giving bond for costs in the amount of $500.00, and the bonds for said sums by the plaintiffs in said respective causes, submitted to the Court with said petition for appeal, be and the same are hereby approved.

(Signed) J. Earl Major, United States Circuit Judge.

[fol. 152-161] Bonds on appeal for $500.00 approved and filed Aug. 1, 1946 omitted in printing.

[fols. 162-165] Citation in usual form filed Aug. 1, 1946, omitted in printing.

[fol. 166] In United States District Court

No. 1072 Civil. No. 1076 Civil

[Title omitted]

Notice to Attorney General of the State of Indiana—Filed August 1, 1946

To the Honorable James A. Emmert, Attorney General of the State of Indiana:

Pursuant to Urgent Deficiencies Act of October 22, 1913, 38 Stat. 220, you are hereby notified that the plaintiff in Cause No. 1076, Chicago, Milwaukee, St. Paul & Pacific

Railroad Company, and plaintiffs in Cause No. 1072, Ayrshire Collieries Corporation, a corporation, et al., have taken appeals to the Supreme Court of the United States from the [fols. 167-168] final decree of the United States District Court for the Southern District of Indiana, Indianapolis Division, entered June 5th, 1946, and the order allowing the appeal makes the same returnable within forty days from the date thereof.

(S.) Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul & Pacific Railroad Company, in Cause No. 1076. Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, a Corporation, et al., plaintiffs in Cause No. 1072.

Service of a copy of the foregoing notice is hereby acknowledged this 2nd day of August 1946.

(S.) James A. Emmert, Attorney General of the State of Indiana, by Thomas L. Webber, Deputy Attorney Geenral of Indiana.

[fol. 169] IN UNITED STATES DISTRICT COURT

No. 1072 Civil. No. 1076 Civil

[Title omitted]

NOTICE OF APPEAL—Filed August 12, 1946

To the United States of America, defendant and Interstate Commerce Commission, et al., intervening defendants.

Please take notice that, pursuant to the statutes and rules of court in such case made and provided, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, plaintiff in cause in Civil No. 1076, and Ayrshire Collieries Corporation, a corporation, et al., plaintiffs in cause Civil No. 1072, and each of them do hereby appeal to the Supreme Court of the United States from the final order and decree of the District Court made and entered on the 5th day of June 1946, which dismissed the bill of complaint in each of the above entitled causes, which complaints sought to have set aside, annulled, suspended and permanently enjoined a certain order of the Interstate Commerce Commission in the proceeding entitled "I. & S. Docket No. 5139, Coal

to Beloit, Wisconsin, and Northern Illinois," entered July 9, 1945, wherein the Commission ordered the respondent to [fols. 170-174] the proceedings before it to cease and desist discrimination and undue prejudice and preference in the rates from certain origins on the Chicago, Milwaukee, St. Paul & Pacific Railroad, and on the Illinois Central Railroad in certain groups of mines in Indiana to Rockford and other destinations on the line of said Chicago, Milwaukee, St. Paul & Pacific Railroad Company and Illinois Central Railroad, in Illinois, and permanently suspending the proposed new rates involved in said proceeding granted permission to the respondent carriers to publish rates approved by the Commission in its report in said proceeding.

Dated August 1st, 1946.

(S.) Carson L. Taylor, W. L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul & Pacific Railroad Company. Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, a corporation, et al.

[fol. 175] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 1072 Civil. No. 1076 Civil

[Title omitted]

PROOF OF SERVICE OF CITATION ON APPEAL—Filed August 12, 1946

Service of citation on appeal in the above causes was made upon the defendant, United States of America, and each of the intervening defendants by delivery of copy of said citation to the attorney for the United States and the attorneys for each of the respective intervening defendants, and service of said citation is duly acknowledged by the attorneys for said defendant and each of the intervening defendants, as evidenced by the receipts thereof which are hereto attached.

Dated August 9, 1946.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayshire Collieries Corporation, et al. Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

[fol. 176] ACKNOWLEDGMENT OF SERVICE OF CITATION ON APPEAL

We, the undersigned, acknowledge service of citation on appeal in the above entitled causes and receipt of copy of such citation.

Dated this 2nd day of August, 1946.

M. B. Holifield, Attorney for Railroad Commission of Kentucky. J. E. Marks, Attorney for Kentucky Coal Agency, Inc. Erli J. Zoll, Jr., Attorney for the Alton Railroad Company (Henry A. Gardner, Trustee) and other intervening railroads. Charles [fol. 177] W. Stodell, Attorney for Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau. C. B. Cardy, Attorney for Tecumseh Coal Company, Sunlight Coal Company, and Northern Illinois Coal Corporation.

[fols. 178-179] ACKNOWLEDGMENT OF SERVICE OF CITATION ON APPEAL

The undersigned acknowledges service of citation on appeal in the above entitled causes and receipt of copy of such citation.

Dated this 3rd day of August, 1946.

Richard A. Wood, Attorney for Belleville Fuels, Inc., and Fifth and Ninth Districts Coal Traffic Bureau.

[fols. 180-201] Service of a copy of the above citation on appeal is hereby acknowledged this 5 day of August, 1946.

J. Howard McGrath, Solicitor General for United States of America. E. M. Reidy, Attorneys for Interstate Commerce Commission.

[fol. 292] In United States District Court

No. 1072 Civil. No. 1076 Civil

[Title omitted]

Praecipe for Transcript of Record—Filed August 13, 1946

To the Clerk:

Please prepare a transcript of the record in the above entitled causes for the purpose of the appeals herein and filed and allowed, including therein the following papers and proceedings, to wit:

1. Bill of complaint of Ayrshire Collieries Corporation, et al., omitting exhibits.
2. Order convening statutory court.
3. Notice of filing complaint and proof of service.
4. Bill of complaint filed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company, omitting exhibits.
5. Order convening statutory court.
6. Order of court consolidating Cause No. 1072, Civil, and Cause No. 1076, Civil, for all purposes.

[fol. 293] 7. Order assigning complaints for final hearing March 25, 1946.

8. Answer of defendant in Cause No. 1072.
9. Answer of defendant in Cause No. 1076.
10. Petition of Kentucky Coal Agency to intervene in both cases as a party defendant and order granting leave to intervene.
11. Petition of Railroad Commission of Kentucky for leave to intervene in both cases as a party defendant and order granting leave to intervene.
12. Petition of Alton Railroad Company, et al., to intervene in both cases as parties defendant and order granting leave to intervene.
13. Order granting leave to Interstate Commerce Commission to intervene in both cases.
14. Answer of Interstate Commerce Commission in both cases.
15. Petition of Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau to intervene as parties defendant in both cases and order granting leave to intervene in both cases.

16. Order vacating trial date and reassigning causes for trial for April 26, 1946.

17. Petition of Tecumseh Coal Company, et al., to intervene in both cases as parties defendant and order granting leave to intervene in both cases.

18. Answer of Railroad Commission of Kentucky and Kentucky Coal Agency, Inc., in both cases.

19. Petition to intervene as parties defendant of Belleville Fuels, Incorporated, and Fifth and Ninth Districts Coal Traffic Bureau and order granting leave to intervene in both cases.

20. Order assigning Honorable J. Earl Major, Judge of United States Circuit Court, to sit as District Judge.

[fol. 204] 21. Docket entry of April 22, 1946, re hearing and agreement of parties.

22. All appropriate docket entries in their proper order.

23. Findings of fact and conclusions of law filed by Judges Major and Igoe and final decree dismissing plaintiffs' complaints at plaintiffs' costs, filed June 3, 1946.

24. Plaintiffs' petition for appeal.

25. Assignment of errors.

26. Statement of jurisdiction on appeal.

27. Order allowing appeal and recitation of filing of bonds by plaintiffs in each case.

28. Citation on appeal.

29. Proof of service of citation on appeal.

30. Notice to Attorney General of the State of Indiana and proof of service.

31. Notice of appeal and proof of service.

32. Notice under Rule 12 of the Rules of the Supreme Court of the United States and proof of service.

33. The following portion of the record of proceedings before the Interstate Commerce Commission in I. & S. Docket No. 5139, which consists of:

(a) Protest and request for suspension of Coal Trade Association of Indiana, dated July 14, 1942.

(b) Order of Interstate Commerce Commission dated July 30, 1942, suspending certain tariffs.

(c) Petition on behalf of Illinois Railroads dated August 12, 1942, filed with Interstate Commerce Commission August 15, 1942.

(d) Order of Interstate Commerce Commission in Docket No. 28881, dated September 9, 1942.

[fol. 205] (e) Petition of Railroad Commission of Kentucky to intervene in I. & S. Docket No. 5139.

(f) Petition of Kentucky Coal Agency, Inc. to intervene in I. & S. Docket No. 5139.

(g) Report and order of Interstate Commerce Commission issued July 9, 1945.

(h) Petition for reconsideration, etc. filed by Coal Trade Association of Indiana, filed September 27, 1945.

(i) Petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company for reconsideration filed September 24, 1945.

(j) Order of Interstate Commerce Commission of October 5, 1945, extending effective date of order of July 9, 1945, to December 20, 1945.

(k) Order of Interstate Commerce Commission dated November 13, 1945, denying petitions for reconsideration filed by Coal Trade Association of Indiana and Chicago, Milwaukee, St. Paul and Pacific Railroad Company and extending effective date of order of July 9, 1945, to January 21, 1946.

(l) Order of Interstate Commerce Commission dated December 6, 1945, extending effective date of order of July 9, 1945, to February 8, 1946.

(m) Order of Interstate Commerce Commission dated December 29, 1945, extending effective date of order of July 9, 1945, to April 8, 1946.

(n) Order of Interstate Commerce Commission dated February 28, 1946, extending effective date of order of July 9, 1945, to May 8, 1946.

(o) Order of Interstate Commerce Commission dated March 21, 1946, extending effective date of order of July 9, 1945, to July 8, 1946.

[fols. 206-208] (p) Narrative transcript of testimony before the Interstate Commerce Commission in I. & S. Docket No. 5139 and Docket No. 28881, which is filed herewith, in lieu of the transcript of hearing before the Interstate Commerce Commission in said dockets..

(q) Exhibits Nos. 1 to 103, both inclusive, and 106 to 118, both inclusive, introduced in evidence before the Interstate Commerce Commission in I. & S. Docket No. 5139.

(r) The following tariffs introduced in evidence as Exhibit No. 8 in the hearing before the District Court:

(1) Baltimore & Ohio Railroad Company Supplement No. 34 to I. C. C. Tariff No. WL-10705.

(2) Chicago & Eastern Illinois Railroad Company Supplement No. 18 to I. C. C. Tariff No. 2.

(3) Chicago, Indianapolis and Louisville Railway Company Supplement No. 20 to I. C. C. Tariff No. 4724.

(4) Chicago, Milwaukee, St. Paul and Pacific Railroad Company Supplements Nos. 27 and 28 to I. C. C. Tariff No. E-7246.

(5) Illinois Central Railroad Company Supplements Nos. 10 and 12 to I. C. C. Tariff No. H-1802.

(6) New York Central Railroad Company Supplements Nos. 54 and 56 to I. C. C. Tariff No. 164.

(7) Pennsylvania Railroad Company Supplement No. 51 to I. C. C. Tariff No. 2387.

(8) Southern Railway Company Supplement No. 33 to I. C. C. Tariff No. C-2230.

34. This praecipe for a record.

(S.) Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, et al. Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

[fol. 209] In United States District Court

[Title omitted]

[File endorsement omitted]

No. 1072 Civil—No. 1076 Civil

Proof of Service of Notice of Filing of Praecipe for Transcript of Record—Filed August 17, 1946

Plaintiffs in the above entitled causes filed Praecipe for transcript of record on appeal in the above causes on August 13, 1946, and served notice of such filing, together with a copy of such praecipe, upon the defendant and each

of the intervening defendants in said causes, receipt of which notice and copy of praecipe was duly acknowledged by the defendant on August 14, 1946, and by the various intervening defendants on either August 13, 1946 or August 14, 1946, which said receipts are hereto attached.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, et al. Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

[fol. 210] NOTICE OF FILING OF PRAECIPE FOR TRANSCRIPT OF RECORD

To Defendants and Intervening Defendants:

Please Take Notice that the plaintiffs in the above entitled causes have filed praecipe for transcript of record on appeal with the Clerk of the District Court, this 13th day of August, 1946, a copy of which praecipe is herewith served upon you.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, et al. Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Received a copy of the above notice and of the praecipe [fol. 211] for transcript of record therein mentioned, this 13th day of August, 1946.

J. E. Marks, Attorney for Kentucky Coal Agency, Inc.; E. J. Zoll, per A. J. O'Brien, Jr., Attorney for The Alton Railroad Company (Henry A. Gardner, Trustee), and other intervening railroads; Charles W. Stodell, Attorney for Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau; C. B. Cardy, Attorneys for Tecumseh Coal Company, Sunlight Coal Company and Northern Illinois Coal Corporation; M. B. Holifield, Attorney for Railroad Commission of Kentucky.

[fol. 212] NOTICE OF FILING OF PRAECIPE FOR TRANSCRIPT OF RECORD

To Defendants and Intervening Defendants:

Please Take Notice that the plaintiffs in the above entitled causes have filed praecipe for transcript of record on appeal with the Clerk of the District Court, this 13th day of August, 1946, a copy of which praecipe is herewith served upon you.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, et al.; Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Received a copy of the above notice and of the praecipe [fol. 213] for transcript of record therein mentioned, this 14th day of August, 1946.

Richard A. Wood, Attorneys for Belleville Fuels, Inc., and Fifth and Ninth Districts Coal Traffic Bureau.

[fol. 214] NOTICE OF FILING OF PRAECIPE FOR TRANSCRIPT OF RECORD

To Defendants and Intervening Defendants:

Please Take Notice that the plaintiffs in the above entitled causes have filed praecipe for transcript of record on appeal with the Clerk of the District Court, this 13th day of August, 1946, a copy of which praecipe is herewith served upon you.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, et al.; Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Received a copy of the above notice and of the praecipe [fols. 215-232] for transcript of record therein mentioned, this 14 day of August, 1946.

J. Howard McGrath, Solicitor General for United States of America; E. M. Reidy, Attorney for United States Commerce Commission.

[fol. 233] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil No. 1072 Civil No. 1076

APPELLEE'S PRAECIPE DESIGNATING ADDITIONAL PORTIONS OF THE RECORD TO BE INCLUDED IN RECORD ON APPEAL—Filed August 19, 1946

To the Clerk of the Above-Named Court:

You will please include, in preparing the record on appeal in the above-entitled cause for transmittal to the Clerk of the Supreme Court of the United States pursuant to the appeal heretofore taken, in addition to such portions of the record as have been designated by appellants, but without duplication, the following:

1. The entire record before the District Court, including all evidence and exhibits received in evidence at the trial of the cause, including the entire record of proceedings before the Interstate Commerce Commission in I. & S. Docket No. 5139 and Docket No. 28881, including transcript of oral testimony, and all documents and exhibits received in evidence, at proceedings before the Commission.

[fol. 234] 2. Appellee's motion to affirm.

3. This praecipe.

4. Clerk's certificate.

This 16th day of August, 1946.

(Signed) J. Howard McGrath, Solicitor General; Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission.

I certify that a copy of the foregoing praecipe was this day mailed to the counsel for appellants.

(Signed) Edward Dumbauld, Special Assistant to the Attorney General.

Aug. 16, 1946.

[fol. 235] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 236-239] PETITIONERS' EXHIBIT No. 1

[fol. 240] BEFORE THE INTERSTATE COMMERCE COMMISSION

PROTEST AGAINST AND REQUEST FOR SUSPENSION OF PROPOSED RATES ON BITUMINOUS COAL FROM MINES IN INDIANA TO BELOIT, WISCONSIN, AND DESTINATIONS IN NORTHERN ILLINOIS—July 14, 1942

[fol. 241] Protestant, Coal Trade Association of Indiana, is a voluntary organization composed of companies operating bituminous coal mines in each of the four major coal freight rate groups in the State of Indiana. Members of said Association produce approximately ninety (90) per cent of the coal shipped by rail from mines in the State of Indiana.

All of the carriers serving the mines within the State of Indiana have filed tariffs effective August 2, 1942, proposing changes in the rates on bituminous coal (1) to Beloit, Wisconsin, and involved intermediate points; (2) to destinations in Northern Illinois; the only exception being the Southern Railway Company which have not changed their rates to Beloit. Most of such changes are increases in the present rates, and a few are reductions.

There is attached hereto as Appendix A, and made a part hereof, a list of the tariff Interstate Commerce Commission numbers, showing by specific reference the item numbers of the rates herein protested and sought to be suspended.

Carriers that serve mines in Illinois likewise have published tariffs effective August 2, 1942, making advances and reductions in the present rates on bituminous coal from the coal origin groups within the State of Illinois, to [fol. 242] these same destinations and to additional destinations; the advances and reductions being uniform as between said groups, except to short-haul points.

The rates herein protested, if permitted to become effective, would be in violation of Sections 1, 3, and 13 of the Interstate Commerce Act, in that: (a) the rates would be unreasonable; (b) the rates would create undue prejudice to shippers of coal from all origin groups in Indiana and undue preference in favor of shippers of coal in interstate and intrastate commerce from all origin groups in Illinois; (c) the rates would create undue preference in favor of some Indiana shippers, and an undue prejudice

against other Indiana shippers of coal from Indiana mines to Beloit, Wisconsin and involved intermediate points.

Protestant, Coal Trade Association of Indiana, respectfully petitions that the tariffs shown in Appendix A hereof, and the rates therein referred to by item number be suspended:

1. Because the present rates are in excess of reasonable maximum rates, and the proposed rates would be unreasonable in violation of Section 1 of the Interstate Commerce Act.

2. Because the proposed rates would unduly prejudice members of Protestant who operate mines in each of the four major groups in Indiana, i. e. Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire and Boonville, in respect to the shipment of coal to certain destinations in northern Illinois and to Beloit, Wisconsin and involved intermediate points, and would unduly prefer producers of coal in the State of Illinois shipping to some destinations in interstate commerce and to other destinations in interstate and intrastate commerce in violation of Sections 3 and 13 of the Interstate Commerce Act.

[fol. 243] 3. Because the proposed rates to Beloit and involved intermediate points would unduly prefer those members of Protestant who operate mines in the Brazil-Clinton and Linton-Sullivan Groups on the CMSTP&P Railroad and Illinois Central Railroad in Indiana, and unduly prejudice those members of Protestant who operate mines on other railroads in the Brazil-Clinton and Linton-Sullivan Groups and all mines, except those on the Southern Railway in the Princeton-Ayrshire Group in Indiana, in violation of Section 3 of the Interstate Commerce Act.

Grounds of Protest

Grounds upon which Protestant relies in support of its protest, are as follows:

To Beloit, Wis., and Intermediate Points.

(a) The present rates for the transportation of bituminous coal from Indiana to Beloit, and involved intermediate points, are not less than reasonable maximum rates. The proposed increases in those rates would be unreason-

able and excessive, in violation of Section 1 of the Interstate Commerce Act. Under the provisions of the Act, the burden of the proof is upon the carriers to justify these advances; mere publication of the rates in the tariffs does not satify the burden imposed by the Act.

(b) The proposed rates to Beloit and involved intermediate points would subject the producers and shippers of coal from Indiana to an undue prejudice and accord to the producers and shippers of coal from Illinois an undue preference, in violation of Section 3 of the Interstate Commerce Act. The present differential to Beloit of 30 cents per ton, Brazil-Clinton under Southern Illinois, would be reduced to 13 cents per ton; the present differential Linton-Sullivan under Southern Illinois would be reduced from 20 cents to [fol. 244] 8 cents and the present differential Princeton-Ayrshire under Southern Illinois would be reduced from 13 cents to 1 cent. It should be noted that this is brought about because no change is proposed from any of the Illinois Groups, while increases are proposed in the rates from all Indiana Groups except Boonville.

The New York Central Railroad and the C&EI Railroad serve the Southern Illinois, Springfield and Danville Groups in Illinois and also serve the Brazil-Clinton, Linton-Sullivan and Princeton-Ayrshire Groups in Indiana. The average distance from mines on the NYC Railroad in the Brazil-Clinton Group to Beloit is 125 miles shorter via short tariff routes than from mines on the NYC Railroad in Southern Illinois. From mines on the C&EI Railroad in the Brazil-Clinton Group, the distance is shorter than from mines on the C&EI in Southern Illinois by 138 miles. For those differences in distance it is proposed to reduce the differential Brazil-Clinton under Southern Illinois from 30 to 13 cents per ton.

From mines on the NYC Railroad in the Princeton-Ayrshire Group the difference in distance compared with Southern Illinois is 33 miles in favor of Princeton-Ayrshire. From mines on the C&EI in the Princeton-Ayrshire district the distance is shorter than from mines on the C&EI in Southern Illinois by 47 miles. For these differences in distance the carriers propose to reduce the differential Princeton-Ayrshire under Southern Illinois from 13 cents to 1 cent per ton.

Resulting rates subject shippers of coal in the Indiana Groups to undue prejudice and accor the shippers of coal in Illinois an undue preference into this market.

[fol. 245] To all of Eastern Iowa, Southern Minnesota, and Western Wisconsin, the rate relationship between the Indiana Groups, on the one hand, and the Illinois Groups, on the other has been predicated on a differential relationship Brazil-Clinton 30 cents per ton under the rates from Southern Illinois, with the rates from the other Indiana Groups constructed on their standard differentials over the rates from the Brazil-Clinton Group and the rates from the other Illinois Groups constructed on their established differentials under the rates from Southern Illinois. There is no substantial difference between the sifuation existing at Beloit, Wisconsin and that existing in other points in Western Wisconsin, Eastern Iowa, and Minnesota in respect to the relationship of distance, competition or any other factors affecting rate or rate relationships. *Illinois Coal Traffic Bureau vs. A. & W. Ry. Co., et al.*, Docket No. 25595, reported in 204-ICC-225, involved the relationship between the rates from Southern Illinois, the base group in Illinois, and the rates from Indiana Groups to Wisconsin, Eastern Iowa, and Minnesota, *including Beloit, Wisconsin.* After a thorough hearing in which all angles of the situation were covered by evidence and after full and complete consideration by the Commission, the Commission concluded as follows:

"Upon all of the facts presented, we believe that the rate relation between southern Illinois and the Indiana groups here assailed is fair and reasonable to all concerned."

"We find that the rates assailed are not unduly prejudicial. The complaint will be dismissed."

[fol. 246] If the relationship existing in the territory involved in that case was fair and reasonable to all concerned it is manifest that the proposal of respondents disrupting the relationships at Beloit, Wisconsin would be unfair and unreasonable. It would cause great confusion in the rate structure upon which the business of all these producing groups have been built. The proposals would injure not only the producers in Indiana but the consumers of coal at Beloit, and would exclude from that market much of the coal produced in Indiana. Such a result would manifestly be contrary to the purpose of Section 15 (a) 2 of the

Interstate Commerce Act. Differential adjustments have been maintained for years to permit the orderly movement of coal from competing producing districts. Coal rates have never been maintained with primary regard to distance and no reason exists at the present time for disregarding this fundamental principle of coal rates.

(c) The rates from mines in Indiana for many years have been constructed upon a fixed differential basis to northern Illinois, Wisconsin, Minnesota, Iowa, and other destination territory. Brazil-Clinton is the base group. The rates from the Linton-Sullivan Group to destinations in northern Illinois are, in most instances, 5 cents per ton over the rate from the Brazil-Clinton Group, and to the balance of the northern Illinois points and to points in Wisconsin (including Beloit), Minnesota, and Iowa, the rates from the Linton-Sullivan Group are 10 cents per ton over Brazil-Clinton Group. The rates from the Princeton-Ayrshire Group have been and are 7 cents per ton over the rates from the Linton-Sullivan Group to all of this territory. The rates from Boonville Group have been, and are, 3 cents over the rates from the Princeton-Ayrshire [fol. 247] Group to all destination territory.

To Beloit the present differential from all mines in the Linton-Sullivan Group is 10 cents per ton over the rates from all mines in the Brazil-Clinton Group. Under the rates proposed, the rates from mines on the CMStP&P Railroad in the Brazil-Clinton Group remain unchanged but the rates from mines located on other railroads would be increased from $2.10 to $2.27 per ton. Likewise, under the proposed tariffs, the rates from mines in the Linton-Sullivan Group on the CMStP&P and Illinois Central would remain unchanged but the rates from mines on the other railroads would be increased from $2.20 to $2.32 per ton. This would make the differential Linton-Sullivan over Brazil-Clinton 22 cents per ton from mines on the C&EI, CI&L, NYC, and Penna Railroads in the Linton-Sullivan Group over the rates from mines on the CMStP&P Railroad in the Brazil-Clinton Group. From the Princeton-Ayrshire Group the present differential from all mines is 7 cents per ton over the rates in effect from all mines in the Linton-Sullivan Group, but under the proposed tariffs the rates from mines in the Princeton-Ayrshire Group will be 19 cents per ton over the rates in effect from mines

on the CMStP&P and Illinois Central Railroads in the Linton-Sullivan Group. The proposed rates, in addition to disrupting the differential between the Indiana Groups, also disrupts the parity which has existed in the rates from all the mines in the Brazil-Clinton Group and from all mines in the Linton-Sullivan Group.

The proposed rates should be suspended because of the undue prejudice to which the producers and shippers of coal on railroads other than the CMStP&P Railroad and Illinois Central Railroad would be subjected, and the undue preference that would be accorded to producers of coal in Indiana on the CMStP&P Railroad and Illinois Central Railroad:

[fol. 248] To Beloit, Wisconsin and the affected intermediate points, the proposed rates are shown as published in compliance with the Order of the Interstate Commerce Commission in I. C. C. Docket No. 25419, and related cases, (Mimeographed) decided March 3, 1942. In that proceeding, the Commission found that the rates on bituminous coal from mines in Illinois, Indiana and Western Kentucky to Beloit were unduly prejudicial to Beloit and unduly preferential to Rockford, Illinois, to the extent that they exceeded the rates from the same origins to Rockford by more than 15 cents per ton. The present rates from the Illinois Groups to Beloit exceed those to Rockford by 30 cents per ton. From Indiana the present rates from mines on the CMStP&P Railroad in the Brazil-Clinton District and from mines on the CMStP&P and Illinois Central Railroad in the Linton-Sullivan District exceeded those to Rockford by 30 cents per ton, and from the other Indiana mines the rates to Beloit exceeded those to Rockford by 13 cents per ton from the Brazil-Clinton District and by 18 cents per ton from the mines in the other districts. The carriers have elected to comply with the order of the Commission by increasing the present rates to Rockford 15 cents per ton and to publish rates to Beloit based 15 cents per ton over the proposed Rockford rates. This results in no change in the rates from all the Illinois Groups or from mines in Indiana on the CMStP&P Railroad and Illinois Central Railroad, but from other mines in Indiana it results in increases ranging from 12 to 17 cents per ton. There is nothing in the order, however, which authorizes any increase in the rates from Indiana, nor is there anything which authorizes the disruption of existing origin relationships which are of long standing.

[fol. 249] The result of this is a complete disruption of the differential relationship which has existed for many years and which was found proper in Illinois Coal Traffic Bureau, *supra*. In the original hearing in Docket No. 25419, reported in 195-ICC-365, the Commission found that the rates on bituminous coal from the mines in Illinois, Indiana, and Western Kentucky to Beloit were unduly prejudicial to Beloit and unduly preferential to Rockford to the extent that they exceeded the rates from the same origins to Rockford by more than 25 cents per ton. The carriers in complying with this order reduced the rate from Southern Illinois, the base group in Illinois, to 25 cents over the rate in effect at that time to Rockford and from the other groups established rates based on the existing origin differentials in effect at that time, and which had been in effect for a great many years and is in effect today. In the last decision in this case, the carriers have elected to comply with the order in such a way as to disrupt relationships between the origin groups in Illinois and Indiana and between Indiana Groups themselves.

The question of rates and differentials to Beloit, Wisconsin and destinations in norther Illinois, was before the Interstate Commerce Commission in I&S Docket No. 4368, coal to Illinois and Wisconsin. In their report, dated April 10, 1939 and reported in 232-ICC-151, the Commission found that the rates proposed by the carriers were justified except from the Princeton-Ayrshire and Boonville Groups in Indiana. In that case the carriers had proposed to Beloit, Wisconsin, Rockford and Freeport, Illinois the same rates from the Princeton-Ayrshire Group as proposed from the Southern Illinois Group, and from the Boonville Group 3 cents over Southern Illinois. The Commission in their [fol. 250] decision found that the proposed differentials would be unduly prejudicial to shippers and producers in the Princeton-Ayrshire and Boonville Groups, and unduly preferential of their competitors in the other Indiana and the Illinois Groups, and suggested the filing of new schedules that would continue in effect the standard differentials from those Groups, i.e., from the Princeton-Ayrshire Group, 7 cents over the rates from the Linton-Sullivan Group, and from the Boonville Group 3 cents over the rates from the the Princeton-Ayrshire Group. The rates now proposed to Beloit and involved intermediate points would make the differential Princeton-Ayrshire over the lowest Linton-

Sullivan rate 19 cents per ton in lieu of 7 cents. It would also change the differential between the Princeton-Ayrshire and the Southern Illinois Groups, from 13 cents to 1 cent over Southern Illinois.

To Northern Illinois Points

(a) The present rates for the transportation of bituminous coal from Indiana to destinations in northern Illinois, are not less than reasonable maximum rates. Proposed increases in those rates, some of which are as much as 45 cents per ton, would result in rates which would be unreasonable and excessive, in violation of Section 1 of the Interstate Commerce Act.

(b) The proposed rates to northern Illinois points would subject the producers and shippers of coal from Indiana to an undue prejudice and accord to the producers and shippers of coal from Illinois who ship in interstate and intrastate commerce within the State of Illinois an undue preference, in violation of Sections 3 and 13 of the Interstate Commerce Act. What has already been said in regard to the relation-
[fol. 254] ship and rates as between Illinois and Indiana to Beloit is equally true in respect to the interstate and intrastate rates within the State of Illinois, in comparison with the interstate rates from Indiana. To many of the destinations involved, the disruption of the differential relationship first occurred in 1930 when the Illinois Commerce Commission ordered reductions in the rates from the Illinois Groups, and the carriers made no corresponding reductions in the rates from the Indiana Groups, and this situation still exists today, but to some of these destinations the carriers are now proposing to further disrupt the differential relationship between Illinois and Indiana.

This Commission has repeatedly ruled that a rate adjustment of long standing should not be disturbed except for urgent reasons; that such adjustments are presumably fair and ought not to be disrupted unless substantial justice requests such action. The protested rates would disturb and disrupt an adjustment of many years standing. This presents a situation where it is particularly proper for the Commission to suspend these rates to the end that there be no disturbance of an adjustment presumably fair and reasonable, unless it be shown by respondents by a full and complete record when urgent and substantial reasons exists for the proposed changes.

Wherefore, Protestant, Coal Trade Association of Indiana, on behalf of its members operating coal mines in the four major rate groups of Indiana, respectfully protests against the rates published to become effective August 2, 1942, enumerated in Appendix A, hereto attached, and prays that these rates be suspended and that this Commission institute an investigation of the propriety and legality of [fol. 252] the rates enumerated in Appendix A hereof, and that, after such hearing, said rates be permanently suspended and cancelled.

Respectfully submitted, Coal Trade Association of Indiana, by Harold V. Scott, Traffic Manager. E. B. Wilkinson, Attorney for Protestant.

Dated July 14, 1942.

Address of Protestant: 632 Cherry Street, Terre Haute, Indiana.

Address of Attorney: 231 South LaSalle Street, Chicago, Illinois.

[fol. 253] *Duly sworn to by Harold V. Scott. Jurat omitted in printing.*

[fol. 254] APPENDIX

List of Schedules, and the Rates Published therein, Against which Protest is made in the Petition in which Reference is made to this Appendix

Baltimore and Ohio Railroad

Supplement No. 34 to ICC No. WL-10705

Rates published from Groups 1 and 2 to all stations named therein.

Chicago and Eastern Illinois Railway

Supplement No. 18 to ICC No. 2

Rates published from Brazil-Clinton, Sullivan and Princeton Groups to all stations named therein.

Chicago, Indianapolis and Louisville Railway

Supplement No. 20 to ICC No. 4724

Rates published from the Linton District to stations—Index Nos. 5813 to 5885, inclusive; 5919; 6955 and 6957; 12713 to 12752, inclusive; 14221 to 14237, inclusive; 14274

to 14280, inclusive; 14295 to 14302, inclusive; 14369; 14373 to 14397, inclusive; 26388b; 26389 to 26396, inclusive; 26457 to 26473, inclusive.

Chicago, Milwaukee, St. Paul and Pacific Railroad

Supplement No. 27 to ICC No. B-7246

Rates published from the Clinton and Linton Districts to all stations named therein.

Supplement No. 28 to ICC No. B-7246

Rates published in Items 150-A, 155-A, and 160-A and 165-A on Page 4 thereof.

New York Central Railroad

Supplement No. 54 to ICC No. 164

Rates published from Terre Haute, Evansville, ES&N, Clay City and Petersburg Groups to the following stations —on C&NW Ry.: Index Nos. 90 to 165, inclusive; 235 to 295, inclusive; 315; 420; 4125 and 4130. To stations on the CGW Railway: Index Nos. 50 to 135, inclusive. To stations on the CMStP&P Railroad: Index Nos. 565 to 607, inclusive; 696 to 702, inclusive; 720 to 760, inclusive; 1020; 1050 to 1070, inclusive; 1085 to 1135, inclusive. To stations on the IC Railroad: 3025 to 3042, inclusive; 3050 to 3065, inclusive; 3150 to 3190, inclusive; and 3515.

[fol. 255] *Illinois Central Railroad*

Supplement No. 10 to ICC No. E-1802

Rates published from Groups 7 (Linton) and 8 (Evansville) to all stations named therein.

Pennsylvania Railroad

Supplement No. 51 to ICC No. 2387

Rates published from Groups 1, 2 and 3 to all stations named therein.

Southern Railway System

Supplement No. 33 to ICC No. C-2230

Rates published from Groups 2 and 3 to all stations named therein.

(Here follows 1 Photolithograph, side folio 256)

Statement Showing the Prior, Present and Proposed Rates from the Four Indiana Groups and Southern Illinois to Beloit, Wis., and Representative Destinations in Northern Illinois, Also the Differential Relationship Indiana Groups Versus Southern Illinois

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Destination	Rates															Differential Under Southern Illinois (Except as							
	Southern Illinois			Brazil-Clinton			Linton-Sullivan			#Princeton-Ayrshire			Boonville			Brazil-Clinton			Linton-Sullivan			Princ Ayrs	
	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres
Beloit, Wis.	275	240	240	245	210	a/210 b/227	255	220	a/220 b/232	262	227	e/227 f/239	265	230	230	30	30	a/30 b/13	20	20	a/20 b/ 8	13	13
Rockford, Ill.	217	210	225	187	a/180 b/197	a/195 b/212	192	c/190 d/202	c/205 d/217	199	209	224	202	212	227	30	a/30 b/13	a/30 b/13	25	c/20 d/ 8	c/20 d/ 8	18	1
Freeport, Ill.	217	210	225	187	a/180 b/197	a/195 b/212	192	c/190 d/202	c/205 d/217	199	209	224	202	212	227	30	a/30 b/13	a/30 b/13	25	c/20 d/ 8	c/20 d/ 8	18	1
Dixon, Ill.	204	200	205	174	184	189	184	189	194	191	201	206	194	204	209	30	16	16	20	11	11	13	+ 1
Richardson, Ill.	204	205	205	174	184	189	179	189	194	186	196	201	189	199	204	30	21	16	25	16	11	18	9
Lanark, Ill.	217	225	225	187	195	a/195 b/200	192	200	a/200 b/205	199	207	212	202	210	215	30	30	a/30 b/25	25	25	a/25 b/20	18	18

\# - Does not include mines on the AW&W Ry
a/ - From CMSTP&PRR mines only
b/ - From other than CMSTP&PRR mines
c/ - From CMSTP&PRR and ICRR mines only
d/ - From other than CMSTP&PRR and ICRR mines
e/ - From Southern Ry mines only
f/ - From other than Southern Ry mines
◆ - Differential over Southern Illinois

(S-149)
7-18-42

20	21	22	23	24	25	26	27	28
Southern Illinois (Except as Noted)								
Linton-Sullivan			Princeton-Ayrshire			Boonville		
Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed
20	20	a/20 b/ 8	13	13	e/13 f/ 1	10	10	10
25	a/20 d/ 8	c/20 d/ 8	18	1	1	15	+ 2	+ 2
25	c/20 d/ 8	c/20 d/ 8	18	1	1	15	+ 2	+ 2
20	11	11	13	+ 1	+ 1	10	+ 4	+ 4
25	16	11	18	9	4	15	6	1
25	25	a/25 b/20	18	18	13	15	15	10

[fol. 257] At a session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 30th day of July, A. D. 1942

INVESTIGATION AND SUSPENSION DOCKET NO. 5139

COAL TO BELOIT, WIS. AND NORTHERN ILLINOIS

ORDER—July 30, 1942

It appearing, That there have been filed with the Interstate Commerce Commission tariffs containing schedules stating new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective on the 2nd day of August, 1942, and later, designated as follows:

The Alton Railroad Company:
Supplement No. 25 to I.C.C. No. 243;
The Atchison, Topeka and Santa Fe Railway Company:
Supplement No. 38 to I.C.C. No. 13094;
The Baltimore and Ohio Railroad Company:
Supplement No. 34 to I.C.C. No. WL-10705;
Supplements Nos. 40 and 42 to I.C.C. No. WL-10709;
Chicago & Eastern Illinois Railroad Company:
Supplement No. 18 to I.C.C. No. 2;
Chicago & Illinois Midland Railway Company:
Supplement No. 2 to I.C.C. No. B-292;
Chicago and Northwestern Railway Company
(Charles M. Thomson, Trustee):
Supplement No. 13 to I.C.C. No. 10934, and Supplement No. 12 to M.F.-I.C.C. No. 46.
Chicago, Burlington & Quincy Railroad Company;
Supplement No. 38 to I.C.C. No. 19670;
Chicago, Indianapolis and Louisville Railway Company
(L. F. DeRamus and Holman D. Pettibone, Trustees):
Supplement No. 20 to I.C.C. No. 4724;
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
(Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees):
Supplement No. 9 to I.C.C. No. B-7238;
Supplements Nos. 27 and 28 to I.C.C. No. B-7246;
Supplement No. 25 to I.C.C. No. B-7287;
The Chicago, Rock Island and Pacific Railway Company
(Frank O. Lowden and Joseph B. Fleming, Trustees):

Supplement No. 25 to I.C.C. No. C-13020;
Gulf, Mobile and Ohio Railroad Company:
Supplement No. 21 to I.C.C. No. 17;
Illinois Central Railroad Company:
Supplements Nos. 10 and 12 to I.C.C. No. E-1802;
Illinois Terminal Railroad Company:
Supplement No. 21 to I.C.C. No. 69;
Litchfield and Madison Railway Company:
Supplement No. 39 to I.C.C. No. 386;
Louisville and Nashville Railroad Company:
Supplement No. 48 to I.C.C. No. A-16428;
The Minneapolis & St. Louis Railroad Company
(L. C. Sprague, Receiver):
Supplement No. 31 to I.C.C. No. B-1028;
Missouri Pacific Railroad Company
(Guy A. Thompson, Trustee):
Supplement No. 24 to I.C.C. No. A-9487;
[fol. 258] The New York Central Railroad Company:
Supplements Nos. 54 and 56 to I.C.C. No. 164;
Supplement No. 3 to I.C.C. No. 182;
The Pennsylvania Railroad Company:
Supplement 51 to I.C.C. No. 2387;
Southern Railway Company:
Supplement No. 33 to I.C.C. No. C-2230;
Wabash Railway Company:
Supplements Nos. 57 and 59 to I.C.C. No. 7276;

It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs, viz:

The Baltimore and Ohio Railroad Company:
Supplement No. 42 to I.C.C. No. WL-10709, on pages 2, 3 and 4 thereof, all provisions shown in connection with the reference mark 40 in a square;
Chicago, Burlington & Quincy Railroad Company:
Supplement No. 38 to I.C.C. No. 19670, on page 3 thereof, all provisions shown under the caption "SECTION 2"; pages 4, 5, 6, 8 and 9 thereof; pages 7 and 10 thereof, except the provisions shown in connection with the reference mark 35 in a square;
Chicago, Milwaukee, St. Paul and Pacific Railroad Company

(Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees):

Supplement No. 28 to I.C.C. No. B-7246, page 4 thereof;

Gulf, Mobile and Ohio Railroad Company:

Supplement No. 21 to I.C.C. No. 17, on page 2 thereof, all provisions applicable in connection with Index Nos. 90 to 670 inclusive, Index No. 715, and Index Nos. 50 and 80; on page 3 thereof, all provisions applicable in connection with Index Nos. 82 to 135 inclusive, 565 to 870 inclusive, and 1050 to 1135 inclusive; on page 4 thereof, all provisions applicable in connection with Index Nos. 3025 to 3190 inclusive;

Louisville and Nashville Railroad Company:

Supplement No. 48 to I.C.C. No. A-16428, on page 2 thereof, all provisions applicable in connection with Station Nos. 28145 to 47040 inclusive; page 3 thereof, except the provisions shown in connection with Station Nos. 57935 to 58950 inclusive; on page 4 thereof, all provisions applicable in connection with Station Nos. 63285 to 104605 inclusive;

The Minneapolis & St. Louis Railroad Company (L. C. Sprague, Receiver):

Supplement No. 31 to I.C.C. No. B-1028, on page 7 thereof, all provisions applicable in connection with Index Nos. 5013 to 5123 inclusive, also 5195, 5196 and 5197; on page 9 thereof, Item No. 520-B;

The New York Central Railroad Company:

Supplement No. 54 to I.C.C. No. 164, page 2 thereof; page 3 thereof, except the provisions shown in connection with Index Nos. 1005, 1010 and 1015; page 4 thereof, except the provisions shown in connection with Index Nos. 1235 and 1505;

Supplement No. 56 to I.C.C. No. 164, on pages 4 to 7 inclusive thereof, all provisions shown in connection with the reference mark 54 in a square;

Supplement No. 3 to I.C.C. No. 182, on page 2, thereof, all provisions applicable in connection with Index Nos. 3045 to 3190 inclusive;

[fol. 259] Wabash Railroad Company:

Supplement No. 59 to I.C.C. No. 7276, on pages 10, 11, 20, 21, 22, 37 and 38 thereof all provisions shown in connection with the reference mark 57 in a square;

And the rates, charges, regulations and practices stated in all schedules contained in each of the other said tariffs and supplements named in this order.

It further appearing, That said schedules make certain increases and reductions in rates for the interstate transportation of bituminous coal, in carloads, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of said schedules contained in said tariffs should be postponed pending said hearing and decision thereon;

It is further ordered, That the operation of the said schedules contained in said tariffs be suspended, and that the use of the rates, charges, regulations and practices therein stated be deferred upon interstate traffic until the 2nd day of March, 1943, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations and practices during the said period of suspension unless authorized by the Commission.

It is further ordered, That the rates and charges and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by the Commission.

It is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding.

And it is further ordered, That this proceeding be, and the same is hereby, assigned for hearing September 11, 1942, 9:30 o'clock, A. M., at the Sherman Hotel, Chicago, Ill., before Examiner Hall.

By the Commission, division 2.

(Seal) W. P. Bartel, Secretary.

[fol. 260] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. ——

In the Matter of Intrastate Rates on Bituminous Coal from Points in Illinois to Rockford, Freeport, Dixon and Other Points in Northern Illinois

PETITION ON BEHALF OF ILLINOIS RAILROADS—August 12, 1942

[fol. 261] To the Interstate Commerce Commission:

Your Petitioners,

The Alton Railroad Company,
The Atchison, Topeka and Santa Fe Railway Company,
The Baltimore and Ohio Railroad Company,
Chicago and Eastern Illinois Railroad Company,
Chicago & Illinois Midland Railway Company,
Chicago and North Western Railway Company (Charles M. Thomson, Trustee),
Chicago, Burlington & Quincy Railroad Company,
Chicago Great Western Railroad Company,
Chicago, Indianapolis and Louisville Railway Company (L. F. DeRamus and Holman D. Pettibone, Trustees),
Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings, and George I. Haight, Trustees),
The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden and Joseph B. Fleming, Trustees),
[fol. 262] The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The New York Central Railroad Company, Lessee),
Illinois Central Railroad Company,
Illinois Terminal Railroad Company,
Litchfield and Madison Railway Company,
Louisville and Nashville Railroad Company,
Missouri-Illinois Railroad Company (Guy A. Thompson, Trustee),
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee),
The Pennsylvania Railroad Company,
Southern Railway Company,

Toledo, Peoria & Western Railroad (John W. Barriger, Federal Manager),
Wabash Railroad Company,

present this petition and respectfully represent and show unto the Commission as follows:

I

Your petitioners are corporations, or trustees or receivers of properties of corporations, organized and existing under the laws of the respective States in which they were incorporated. Each of your petitioners has been for many years past, and is now, engaged in operating lines of railroad within the State of Illinois and adjoining States, and has been, and is now, engaged in the business of transporting freight, including bituminous coal, in intrastate commerce between points within the State of Illinois, and in interstate commerce through the State of Illinois and between points in the State of Illinois and points in other States. Each of your petitioners is a common carrier of freight [fol. 263] by railroad, subject to the provisions of the Interstate Commerce Act, as amended. This petition is filed in pursuance of the provisions of the said Interstate Commerce Act, as amended, and in particular Sections 3 and 13 thereof.

II

By schedules filed to become effective August 2, 1942, your petitioners proposed generally increased rates on bituminous coal, carloads, from producing points in Illinois, Indiana, and west Kentucky, to Beloit, Wisconsin, Rockford, Freeport, Dixon, Illinois, and other destinations in a territory embracing a portion of the State of Illinois lying west and northwest of the Chicago district. The increases were proposed in an integrated rate adjustment including both interstate and intrastate rates.

The rates so published for application on Illinois intrastate traffic were suspended until November 30, 1942, by order of the Illinois Commerce Commission entered July 21, 1942, in its Docket No. 30935, *In the Matter of the Proposed Changes in Rates on Bituminous Coal Between Points in the State of Illinois*, a copy of which order is attached hereto as Appendix A. Those rates are generally the same

as the rates which the Illinois Commerce Commission found not justified July 28, 1939, in its docket No. 25667, plus the 10 cents per ton increase authorized by that commision by orders entered in 1937 and 1938 in its docket No. 23208, following a similar general increase in interstate rates authorized by the Interstate Commerce Commission in [fol. 264] *Ex Parte* No. 115, *General Commodity Rate Increases, 1937*, 223 I. C. C. 657, 229 I. C. C. 435, and plus the 5 cents per ton increase authorized by the Illinois Commission by order entered in 1942 in its docket No. 30546, following a similar general increase in interstate rates authorized by the Interstate Commerce Commission in *Ex Parte* No. 148, *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545.

The increased rates published for application on interstate traffic moving to Rockford, Freeport, Dixon, and Beloit, are, with the exception of those from origin groups in Indiana, substantially the same as those approved by the Interstate Commerce Commission in I. & S. Docket No. 4368, *Coal to Illinois and Wisconsin*, 232 I. C. C. 151, decided April 10, 1939, plus the increases of 1937 and 1942 authorized in *Ex Parte* No. 115 and *Ex Parte* No. 148, referred to above. However, for reasons hereinafter set forth in paragraphs V and VI, your petitioners advised your Commission that they had no objection to the suspension of the proposed increased interstate rates. Your Commission thereafter, on July 30, 1942, under Investigation and Suspension Docket No. 5139, *Coal to Beloit, Wis., and Northern Illinois*, suspended the proposed increased interstate rates until March 2, 1943.

III

The intrastate rates on bituminous coal from Illinois origin groups to Rockford, Freeport, and Dixon continued in effect by reason of the refusal of the Illinois Commission [fol. 265] to permit the increases proposed to become effective, were published originally in compliance with maximum rate orders entered by the Illinois Commerce Commission in its docket No. 13558, *Chamber of Commerce of Freeport v. B. & O. R. R. et al.*, No. 13569, *Rockford Manufacturers and Shippers Association v. B. & O. R. R. et al.*, and No. 14009, *Sandusky Cement Company, et al. v. Illinois Central*

R. R. Co., et al.[1] The said orders, which became effective in 1930, are still outstanding and operative against your petitioners, and by reason of the refusal of the Illinois Commission to permit the proposed increased intrastate rates to become effective, the aforesaid orders require your petitioners to maintain for the intrastate transportation of bituminous coal from Illinois producing points to Rockford, Freeport, and Dixon rates not higher than the rates fixed therein, plus the general increases since authorized by the Illinois Commission and referred to previously herein.

[fol. 266] Under the statutes and laws of the State of Illinois the railroads operating in that State, including your petitioners, are without power to make effective and to charge for the intrastate transportation of freight within Illinois any rate suspended by the Illinois Commerce Commission, and they are required under heavy penalties to continue and observe the rates published and filed with the Illinois Commission in compliance with the maximum rate orders previously entered by that Commission.

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[1] The orders in dockets Nos. 13558 and 13569 required the establishment of certain rates on coal from the Danville, northern Illinois, Fulton County, Peoria, Springfield, Centralia, Belleville, DuQuoin and southern Illinois groups to Rockford and Freeport. The effect of the order was to reduce the rates from practically all Illinois groups to Rockford and Freeport by 17 cents per ton, except that the rate from the northern Illinois group to Rockford and Freeport was reduced by 47 cents per ton. The substantial reduction required in the rate from the northern Illinois group to Rockford and Freeport necessitated a reduction in the rate from the same group to Dixon in order to avoid a departure from the long and short haul provisions of the Illinois Public Utilities Act.

The order in docket No. 14009 required the establishment of certain maximum rates on coal from the Springfield and southern Illinois groups to Dixon, Illinois, the effect of which was to reduce the rates from these groups by 14 cents per ton. In order to avoid departures from the long and short haul provisions of the Illinois Public Utilities Act, it was necessary in complying with the order for the carriers to reduce the rates from the DuQuoin, Belleville, and Centralia groups by 4 cents per ton.

IV

The intrastate rates on bituminous coal from Illinois groups to Rockford, Freeport, and Dixon continued in effect by reason of the refusal of the Illinois Commission to permit the increases proposed to become effective are generally the same[2] as the rates which this Commission in *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, 549, found to be "well below the reasonable level of rates in this territory." In that case, which resulted from a petition by Illinois railroads under Section 13 of the Interstate Commerce Act, as amended, this Commission did not require increases in the Illinois intrastate rates to Rockford, Freeport, and Dixon because of its finding therein that there was no discrimination against persons and localities in interstate commerce or against interstate commerce insofar as interstate rates from Indiana mines to those same destinations were concerned, the interstate rates from mines in [fol. 267] Indiana to the same destinations being on a level approximately the same as the level of the assailed intrastate rates. The Commission there said (182 I. C. C. 537, 564): "The assailed rates to Rockford, Freeport, and Dixon should not be found to be unlawful under section 13 of the act until and unless the interstate rates from Indiana groups to the same destinations are increased to a level more nearly commensurate with the general level of the rates on coal in this territory."

The interstate rates from Indiana mines to Rockford, Freeport, Dixon and related destinations which have been proposed by your petitioners and which have been suspended by your Commission in I. & S. 5139, generally speaking, are higher than the rates in effect at the time when the decision in *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, was rendered by this Commission, and are on a level more nearly commensurate with the general level of rates on coal in this territory.

V

By virtue of the orders of this Commission in *Illinois-Indiana Coal Cases*, 128 I. C. C. 265, and *West Kentucky Coal Bureau* v. *Illinois Central R. Co.*, 172 I. C. C. 279, rates

[2] Except for the general increases since authorized by the Illinois Commission and referred to previously herein.

on bituminous coal from producing points in west Kentucky to the destinations covered by this petition, and to other destinations as well, are required to be maintained at 35 cents over rates from producing points in southern Illinois. The increases in the interstate rates from west Kentucky [fol. 268] mines which have been proposed by your petitioners and which have been suspended in I. & S. 5139, cannot be made effective because like increases in the intrastate rates from southern Illinois mines to the same destinations have been prevented by the Illinois Commission from taking effect.

In *Fairbanks Morse & Co.* v. *Alton & Southern R. Co.*, 195 I. C. C. 365, 251 I. C. C. 181, commonly known as the *Beloit Case*, this Commission required that rates from Illinois, Indiana, and west Kentucky mines to Beloit, Wisconsin, should not exceed by more than 15 cents per ton the rates contemporaneously maintained from the same mines to Rockford, Illinois. Your petitioners' proposed continuance of the present rates from Illinois and west Kentucky mines to Beloit and their proposed increase in the rates from the same mines to Rockford, constitutes their effort to establish the required differential Rockford under Beloit and thus to comply with the order of this Commission in the *Beloit Case* without the sacrifice of revenue which would be entailed by the alternative method of complying with the order in the *Beloit Case* of making a reduction of 15 cents per ton in the rates to Beloit. In view of the order in the *Beloit Case*, retention of the present rates to Beloit cannot be effected because of the refusal of the Illinois Commission to permit the proposed increases in the intrastate rates from Illinois mines to Rockford to become effective.

[fol. 269]

VI

The adjustment of rates on bituminous coal from producing points in Illinois, Indiana, and west Kentucky to destinations in Illinois, Wisconsin, and other States is extremely sensitive. The delicate balance of this adjustment can be maintained only by concurrent readjustments of rates from producing points in the several States to competitive destinations. Because of the delicacy of this adjustment involving intrastate as well as interstate rates your petitioners, as heretofore stated, advised your

Commission that they had no objection to the suspension of the proposed increased interstate rates.

The suspension of the proposed increased intrastate rates by the Illinois Commission in its Docket No. 30935 caused your petitioners to fear that establishment of the increased interstate rates from Indiana mines, now suspended in I. & S. 5139, would jeopardize the movement of Indiana coal to this northern Illinois destination territory.

VII

The effect of the suspension by the Illinois Commerce Commission in its Docket No. 30935 is to require your petitioners to maintain for the intrastate transportation of bituminous coal from Illinois mines to Rockford, Freeport, Dixon, and other destinations in northern Illinois, rates materially lower in level [3] than (1) the level of inter- [fol. 270] state rates on bituminous coal found justified by the Interstate Commerce Commission in I. & S. 4368 for application via interstate routes from and to the same points, and (2) the level of interstate rates on bituminous coal found justified by the Interstate Commission in I. & S. 4368 for application from mines in southern Indiana and west Kentucky to the same destinations in Illinois. The aforesaid suspension by the Illinois Commission also results in your petitioners being forced to maintain for the intrastate transportation of bituminous coal from Illinois mines to those same Illinois destinations rates materially lower in level than the interstate rates on bituminous coal presently in effect from mines in Illinois to more distant destinations in eastern Iowa and southern Wisconsin, many of which rates have been prescribed or approved by this Commission. The low level of rates which your petitioners are thus required to maintain for the intrastate transportation of bituminous coal from Illinois mines to Rockford, Freeport, Dixon and related destinations in northern Illinois causes and creates an undue and unreasonable advantage, preference, and prejudice between persons and localities in intrastate commerce, on the one hand, and in interstate commerce, on the other hand, and causes an undue, un-

[3] Except for the general rate increases previously referred to herein which have taken effect on interstate as well as intrastate traffic.

reasonable, and unjust discrimination against interstate commerce and casts an undue burden upon interstate commerce, which is forbidden and declared to be unlawful by the Interstate Commerce Act, particularly Sections 3 and 13 thereof.

[fol. 271] VIII

Petitioners further show, as representative of the undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and in interstate commerce, on the other, the following situations resulting from the refusal of the Illinois Commission to permit to become effective increases in the intrastate rates on bituminous coal from Illinois mines to Rockford, Freeport, Dixon, and related destinations in northern Illinois:

1. *To Rockford, Illinois:*

(*a*) The intrastate rate on bituminous coal from mines in the southern Illinois group which by order of the Illinois Commission your petitioners are required to maintain is $2.10[4] per net ton. This rate applies for an average distance of 368 miles,[5] reflects 61.2 per cent of the Holmes & Hallowell Scale[6] (*Holmes & Hallowell Co.* v. *G. N. Ry. Co.*, 69 I. C. C. 11) and yields average earnings of 5.7 mills per ton-mile. The interstate rate which this Commission approved in I. & S. 4368 from mines in the southern Illinois group to Beloit, Wisconsin, is $2.55 per net ton. This rate applies for an average distance of 392 miles, reflects 70.6 [fol. 272] per cent of the Holmes & Hallowell scale, and yields average earnings of 6.5 mills per ton-mile. The interstate rate recently prescribed in *Midland Electric Coal Corporation* v. *C. & N. W. Ry. Co.*, 232 I. C. C. 5, from mines in

[4] Rates stated in this petition include the increases to the interstate and intrastate rates made in 1937 and 1938 following *Ex Parte* No. 115, but do not include the increases made in 1942 following *Ex Parte* No. 148.

[5] Distances given in this petition are via average short tariff routes.

[6] All comparisons made to the Holmes & Hallowell scale in this petition are to that scale as increased in accordance with the increases authorized in *Ex Parte* No. 115.

the southern Illinois group to Dubuque, Iowa, and which presently is in effect, is $2.89 per net ton. This rate applies for an average distance of 420 miles, reflects 77.5 per cent of the Holmes & Hallowell scale and yields average earnings of 6.9 mills per ton-mile. The interstate rate which the Interstate Commission prescribed in *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, from mines in the southern Illinois group to Davenport, Iowa, was $2.25 per net ton. For an average distance of 340 miles this rate represents 69.2 per cent of the Holmes & Hallowell scale and yields average earnings of 6.6 mills per ton-mile.

(*b*) The intrastate rate required to be continued in effect from mines in the Springfield group is $1.80 per net ton. This rate applies for an average distance of 253 miles, reflects 65.2 per cent of the Holmes & Hallowell scale, and yields average earnings of 7.1 mills per ton-mile. The interstate rate which this Commission found justified in I. & S. 4368 from mines in the Brazil-Clinton, Indiana, group to the same destination is $1.95 per net ton. This rate applies for an average distance of 253 miles, reflects 70.7 per cent of the Holmes & Hallowell scale and yields average earnings of 7.7 mills per ton-mile.

[fol. 273] 2. *To Freeport, Illinois:*

The intrastate rate on bituminous coal from mines in the southern Illinois group which by order of the Illinois Commission your petitioners are required to maintain is $2.10 per net ton. This rate applies for an average distance of 370 miles, reflects 61.2 per cent of the Holmes & Hallowell scale and yields average earnings of 5.7 mills per ton-mile. In *Creamery Package Manufacturing Co.* v. *Alton R. R. Co.*, 227 I. C. C. 322, 251 I. C. C. 181, this Commission found not unreasonable interstate rates from mines in the southern Illinois group to Fort Atkinson and Lake Mills, Wisconsin, of $2.83 and $2.93 per net ton, respectively. These rates apply, respectively, for average distances of 437 and 452 miles, reflect 73.3 and 73.6 per cent of the Holmes and Hallowell scale and both yield average earnings of 6.5 mills per ton-mile. The interstate rate which this Commission approved in I. & S. 4368 from mines in the southern Illinois group to Beloit, Wisconsin, is $2.55 per net ton. This rate applies for an average distance of 392 miles, reflects 70.6 per cent of the Holmes & Hallowell scale, and yields average earnings of 6.5 mills per ton-mile.

3. *To Harvard, Illinois:*

The intrastate rate on bituminous coal from mines in the southern Illinois group which by order of the Illinois Commerce Commission your petitioners are required to maintain is $2.40 per net ton. This rate applies for an average distance of 421 miles, reflects 64.3 per cent of the [fol. 274] Holmes & Hallowell scale and yields average earnings of 5.7 mills per ton-mile. The interstate rate which this Commission found justified in I. & S. 4368 from mines in the southern Illinois group to Beloit, Wisconsin, is $2.55 per net ton. This rate applies for an average distance of 392 miles, reflects 70.6 per cent of the Holmes & Hallowell scale and yields average earnings of 6.5 mills per ton-mile.

Petitioners state that the foregoing examples are intended to be merely illustrative, and if given an opportunity to do so your petitioners will be prepared to show numerous other examples of the undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce on the other hand.

IX

Petitioners show that there is a heavy movement of bituminous coal traffic intrastate via the lines of your petitioners from mines in Illinois to Rockford, Freeport, Dixon, and related destinations in northern Illinois. The revenue which your petitioners receive for the transportation of this intrastate bituminous coal traffic under the rates required to be maintained as maxima by orders of the Illinois Commerce Commission aforementioned is at least $60,000 less per annum than the revenue which your petitioners would receive if the level of the intrastate rates thereon were increased to a level commensurate with the level of the interstate rates from other mines to the same destinations [fol. 275] and from the same mines to other destinations in southern Wisconsin and eastern Iowa, which the Interstate Commerce Commission has prescribed or found not unreasonable.

The revenue discrimination above mentioned does not reflect the entire revenue loss suffered by your petitioners as a result of the required continuance of the low intrastate rates on bituminous coal to Rockford, Freeport, Dixon, and

related points. Under the orders in the *West Kentucky Coal Bureau* and *Beloit* cases aforementioned, your petitioners are precluded from increasing the interstate rates from west Kentucky mines to the aforesaid destinations in northern Illinois and are unable to avoid reducing the interstate rates from Illinois, Indiana, and west Kentucky mines to Beloit, Wisconsin, by reason of the refusal of the Illinois Commission to permit the proposed increases in the intrastate rates to become effective. Nor can the rates from Indiana mines be increased to this destination territory without corresponding increases being made in the rates from Illinois mines, without jeopardizing and disrupting the entire adjustment of rates on bituminous coal in this territory. The revenue loss which your petitioners suffer by reason of these circumstances is at least $40,000 per annum.

As a direct result, therefore, of the refusal of the Illinois Commission to permit to become effective increases in the intrastate rates on bituminous coal to Rockford, Freeport, Dixon, and related points, to a level more nearly approach-[fol. 276] ing the level of the interstate rates to the same destinations approved by this Commission in I. & S. 4368, and more nearly approaching the level of the interstate rates presently in effect from Illinois, Indiana, and west Kentucky mines to adjacent destinations in southern Wisconsin and eastern Iowa, your petitioners are suffering a revenue loss on the bituminous coal tonnage transported by them from Illinois, Indiana, and west Kentucky mines to Beloit, Wisconsin, and to Rockford, Freeport, Dixon, and related destinations in northern Illinois of at least $100,000 per annum.

X

Petitioners further show that there are no operating or traffic conditions or circumstances of any kind which justify or require rates on coal moving in intrastate commerce from mines in the State of Illinois to Rockford, Freeport, Dixon or related destinations in northern Illinois, lower than the level of the rates which are contemporaneously applicable or which have been approved by the Interstate Commerce Commission on interstate shipments of bituminous coal from mines in Illinois, Indiana, and western Kentucky to destinations in Illinois, Iowa, or Wisconsin.

XI

Petitioners further show that the rates which have been suspended in I. & S. 5139, applying on interstate shipments of bituminous coal from origins in Illinois, Indiana, and western Kentucky to Beloit, Wisconsin, and to the points [fol. 277] of destination in northern Illinois to which lower intrastate rates are required to be maintained by orders of the Illinois Commerce Commission, as well as the interstate rates now in effect from origins in Illinois, Indiana, and west Kentucky to adjacent destinations in eastern Iowa and southern Wisconsin, are not in excess of maximum reasonable rates.

XII

Wherefore, your petitioners pray this honorable Commission to institute promptly an investigation with respect to the matters and things in this petition recited; to make parties to such investigation all common carriers by railroad subject to the Interstate Commerce Act which operate in the State of Illinois; and, after due notice has been given to the State of Illinois and to the proper authorities thereof, and after such hearing or hearings as the Commission may direct to be held, an order be entered by the Commission (jurisdiction to issue which is affirmed, under circumstances such as are here present, in *Emergency Freight Charges Within Georgia*, 213 I. C. C. 515, 516-517, and other cases), removing said violations of law herein complained of and prescribing rates and charges for the transportation of bituminous coal moving in intrastate commerce within the State of Illinois from producing points to Rockford, Freeport, Dixon, and other destinations in the territory north and west of Chicago to which increased rates on bituminous coal were proposed by your petitioners but suspended by order of the Illinois Commerce Com- [fol. 278] mission in its Docket No. 30935 (a copy of said suspension order being attached as Appendix A hereto), which shall not be lower than the rates and charges for the intrastate transportation of bituminous coal proposed by your petitioners in schedules which were suspended by the aforesaid order of the Illinois Commerce Commission entered in its Docket No. 30935 as aforesaid; and that there be taken in the premises all such further proceedings, and that there be entered all such further order or orders as may be necessary to remove the advantage, preference,

prejudice, and discrimination as set out in this petition and as may be shown as a result of such investigation as may be ordered by this Commission.

Respectfully submitted,

W. S. Mercer, Agent for Petitioners.

Union Station Building, Chicago, Illinois.
August 12, 1942.

[fol. 279] APPENDIX A

30935

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The Alton Railroad Company, et al.

In the matter of the proposed changes in rates on bituminous coal between points in the State of Illinois.

SUSPENSION ORDER

By the Commission:

Schedules have been filed by Illinois carriers in which it is proposed to change rates on bituminous coal between points in the State of Illinois, and it is further proposed in the said schedules that such changes in rates shall become effective August 2, 1942.

It appears, from an examination of the schedules hereinafter named, that the Commission should enter upon a hearing concerning the propriety of the proposed changes in rates, and that, pending the hearing and the decision thereon, the said changes in rates should not go into effect.

It Is Therefore Ordered that the proposed changes in rates on bituminous coal between points in the State of Illinois, stated in schedules designated as follows:

The Alton Railroad Company:
Supplement No. 22 to Ill. C. C. No. 147;
The Atchison, Topeka and Santa Fe Railway Company:
Supplement No. 30 to Ill. C. C. No. 622;

[fol. 280] The Baltimore and Ohio Railroad Company (Sandusky, Willard, Stewartsville, Belpre, Ohio and West):
Supplement No. 40 to Ill. C. C. No. WL-984;
Chicago & Eastern Illinois Railroad Company:
Supplement No. 17 to Ill. C. C. No. 2;
Chicago & Illinois Midland Railway Company:
Supplement No. 2 to Ill. C. C. No. B-221;
Chicago and North Western Railway Company (Charles M. Thomson, Trustee):
Supplement No. 12 to Ill. C. C. No. 867;
Chicago, Burlington & Quincy Railroad Company:
Supplement No. 38 to Ill. C. C. No. 2064;
Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees):
Supplement No. 9 to Ill. C. C. No. 593 and
Supplement No. 21 to Ill. C. C. No. 608;
The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden and Joseph B. Fleming, Trustees):
Supplement No. 25 to Ill. C. C. No. 782;
Gulf, Mobile and Ohio Railroad Company:
Supplement No. 19 to Ill. C. C. No. 3;
Illinois Central Railroad Company:
Supplement No. 11 to Ill. C. C. No. E-316;
Illinois Terminal Railroad Company:
Supplement No. 23 to Ill. C. C. No. 62;
Litchfield and Madison Railway Company:
Supplement No. 34 to Ill. C. C. No. 296;
Louisville and Nashville Railroad Company:
Supplement No. 48 to Ill. C. C. No. 114;
[fol. 281-282] The Minneapolis & St. Louis Railroad Company (L. C. Sprague, Receiver):
Supplement No. 21 to Ill. C. C. No. 303;
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee):
Supplement No. 23 to Ill. C. C. No. 397;
The New York Central Railroad Company:
Supplement No. 54 to Ill. C. C. No. 22 and
Supplement No. 3 to Ill. C. C. No. 28;
The Pennsylvania Railroad Company:
Supplement No. 51 to Ill. C. C. 146;
Southern Railway Company:
Supplement No. 34 to Ill. C. C. No. C-278;

Wabash Railroad Company:
Supplement No. 42 to Ill. C. C. No. 1081;

all other tariffs or schedules not herein specifically designated in so far as they purport to change rates on bituminous coal between points in the State of Illinois, effective August 2, 1942; and all reissues of the aforesaid schedules; be, and the same are hereby, suspended until November 30, 1942, subject to the further order of this Commission, and no change shall be made in such rates during the said period of suspension unless authorized by special permission of the Commission.

It Is Further Ordered that the rates thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this proceeding has been disposed of or until the period of suspension and any extension thereof has expired unless authorized by special permission of the Commission.

By order of the Commission, at Springfield, Illinois, this 21st day of July, 1942.

(Signed) Frank M. Kalteux, Secretary. (Seal.)

[fol. 283] At a Session of the Interstate Commerce Commission, Division 1, Held at Its Office in Washington, D. C., on the 9th Day of September, A. D. 1942

No. 28881

Bituminous Coal Rates Within Illinois

Order—September 9, 1942

It appearing, That a petition has been filed on behalf of The Alton Railroad Company and other common carriers by railroad operating in the State of Illinois averring that the Illinois Commerce Commission by order dated July 21, 1942, in its Docket No. 30935, *In the Matter of the Proposed Changes in Rates on Bituminous Coal between Points in the State of Illinois*, required petitioners to maintain rates for application on bituminous coal moving by rail in intrastate commerce within the State of Illinois from producing points to Rockford, Freeport, Dixon, and other destinations north and west of Chicago, which are less than those on interstate traffic;

It further appearing, That the said petitioners allege that the observance by them of said order of the Illinois Commerce Commission causes and results in undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce on the one hand and interstate commerce on the other hand, and undue, unreasonable and unjust discrimination against interstate commerce;

And it further appearing, That there have been brought in issue rates and charges made or imposed by authority of the State of Illinois:

It is ordered, That an investigation be, and it is hereby, instituted by the Commission, upon its own motion, to determine whether the rates and charges of common carriers by railroad, or any of them, for the transportation of bituminous coal moving in intrastate commerce within the State of Illinois from producing points to Rockford, Freeport, Dixon, and other destinations north and west of Chicago, made or imposed by authority of the State of Illinois, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and also to determine what rates and charges, if any, or what maximum or minimum or maximum and minimum rates and charges shall be prescribed thereafter to be charged by common carriers by railroad operating within the State of Illinois in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

[fol. 284] *It is further ordered*, That all common carriers by railroad operating within the State of Illinois subject to the jurisdiction of this Commission be, and they are hereby, made respondents to this proceeding; that a copy of this order be served upon each of said respondents; and that the State of Illinois be notified of this proceeding by sending copies of this order and of said petition by registered mail to the Governor of said State, and to the Illinois Commerce Commission at Chicago, Ill.

It is further ordered, That notice of this proceeding be given the public by depositing a copy of this order in the

office of the Secretary of the Commission at Washington, D. C.

And it is further ordered, That this proceeding be, and the same is hereby, assigned for hearing October 27, 1942, 9:30 o'clock A. M., at the Morrison Hotel, Chicago, Illinois, before Examiner Trezise.

By the Commission, division 1.

W. P. Bartel, Secretary. (Seal.)

[fol. 285] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28881

BITUMINOUS COAL RATES WITHIN ILLINOIS

I. & S. Docket No. 5139

COAL TO BELOIT, WIS. AND NORTHERN ILLINOIS

Docket No. 28888

MIDDLE STATES FUELS, INC.

vs.

A. T. & S. F. RY. CO., et al.

PETITION FOR LEAVE TO INTERVENE—Filed March 28, 1943

Comes now your petitioner, Railroad Commission of Kentucky, and respectfully represents that it has an interest in the matters in controversy in the above styled proceedings and desires to intervene and become a party thereto and for grounds of the proposed intervention says:

I

That petitioner is a body politic created by the Constitution of the Commonwealth, and among other duties is required by statute to bring to the attention of the Interstate Commerce Commission freight rates to and from Kentucky, which it believes to be unreasonable, unduly discriminatory, or otherwise unlawful.

II

That the proceedings named above bring into issue the relationship of the rates on bituminous coal, carloads, from all the midwestern coal fields, including that of western Kentucky, to various destinations in northern Illinois and southern Wisconsin. That any changes in these rates which [fol. 286] would increase the differentials of the western Kentucky group over the Illinois and Indiana groups would be detrimental to the producers of coal in western Kentucky and also to other Kentucky interests dependent upon the coal industry for their livelihood. Petitioner is therefore opposed to any changes in the rates from and to the points embraced herein which would increase the differentials of western Kentucky over the Illinois and Indiana groups.

Wherefore said Railroad Commission of Kentucky prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at oral argument, if oral argument is granted.

Respectfully submitted, Railroad Commission of Kentucky, by Frank L. McCarthy, Chairman; Jack E. Fisher, Member; Mrs. John W. Langley, Member.

Dated at Frankfort, Ky., March 10, 1943.

[fol. 287] *Duly sworn to by Frank L. McCarthy. Jurat omitted in printing.*

[fol. 288] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28881

BITUMINOUS COAL RATES WITHIN ILLINOIS

I. & S. Docket No. 5139

COAL TO BELOIT, WISC. and NORTHERN ILLINOIS

Docket No. 28888

MIDDLE STATES FUELS, INC.

vs.

A. T. & S. F. Ry., et al.

PETITION FOR LEAVE TO INTERVENE—Filed March 28, 1943

Comes now your petitioner, Kentucky Coal Agency, Incorporated, and respectfully represents that it has an interest in the matters in controversy in the above styled proceedings and desires to intervene and become a party thereto and for grounds of the proposed intervention says:

I

That petitioner is a Kentucky corporation with its principal office and place of business at Madisonville, Ky. Petitioner's stockholders own and operate bituminous coal mines located on the Illinois Central Railroad and Louisville & Nashville Railroad, in what is generally known as the western Kentucky coal field.

II

That the proceedings named above bring into issue the relationship of the rates on bituminous coal from all of the midwestern coal fields, including that of western Kentucky, to various destinations in northern Illinois and southern Wisconsin. That any changes in these rates which would [fol. 289] increase the differentials of the western Kentucky group over the Illinois and Indiana groups would be detrimental to petitioner's members. Petitioner is therefore opposed to any changes in the rates from and to the points embraced herein which would increase the differentials of western Kentucky over the Illinois and Indiana groups.

Wherefore, said Kentucky Coal Agency, Incorporated, prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at oral argument, if oral argument is granted.

Respectfully submitted, Kentucky Coal Agency, Incorporated, by H. C. Moore, President; J. E. Marks, 145 East High Street, Lexington, Kentucky, Attorney for Petitioner.

Dated at Lexington, Ky., March 10, 1943.

[fol. 290] *Duly sworn to by H. C. Moore. Jurat omitted in printing.*

[fol. 291] INTERSTATE COMMISSION COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 5139 [1]

COAL TO BELOIT, WIS., AND NORTHERN ILLINOIS

Submitted December 7, 1944. Decided July 9, 1945

1. Proposed rates on bituminous coal from Indiana and Western Kentucky rate groups to northern Illinois destinations, and from Indiana groups to Beloit, Wis., found unreasonable, unjustly discriminatory, and unduly prejudicial and preferential.

2. Present rates on bituminous coal from points in the Indiana groups to northern Illinois destinations found unjustly discriminatory and unduly prejudicial and preferential.

3. Intrastate rates on bituminous coal from Illinois mines to northern Illinois destinations found to cause unjust discrimination against interstate commerce.

4. Bases for reasonable, non-discriminatory, and non-prejudicial rates from Illinois, Indiana, and western Kentucky mines to northern Illinois destinations and Beloit determined and, in part, prescribed. Suspended schedules of

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[1] This report also embraces Docket No. 28881, Bituminous Coal Rates Within Illinois.

interstate rates required to be canceled, without prejudice to the establishment of rates on the approved bases.

Erle J. Zoll, Jr., Hewitt Biaett, Edward A. Kaier, Elmer A. Smith, Toll R. Ware, T. O. Jennings, J. A. Christiansen, Charles Clark, A. J. Dixon, T. N. Cook, B. F. Rice, C. J. Bindner, P. F. Gault, William L. Hunter, Leo P. Day, and R. G. Raasch for respondents.

David Cavers, Richard H. Field, Bernard M. Fitzgerald, Warren Price, Jr., Fred D. Binkley, and M. D. Miller for Price Administrator.

George F. Barrett, Attorney General, and *William C. Wines*, Assistant Attorney General, for the State of Illinois; *John E. Benton* and *Frederick G. Hamley* for National Association of Railroad and Utilities Commissioners.

C. B. Cardy, C. P. Hoy, Ford D. Porter, R. H. May, August G. Guthcim, A. S. Boden, R. F. Wood, C. S. Bather, Charles W. Stadell, N. H. Vaughan, E. B. Wilkinson, J. A. Moran, Harold V. Scott, A. J. Christiansen, Howard W. Vesey, J. E. Marks, Frank L. McCarthy, Joseph W. Elliott, George W. Cole, H. F. Cholet, and *William F. Ehmann* for protestants and other parties.

REPORT OF THE COMMISSION

MILLER, *Commissioner:*

Exceptions were filed to the report proposed by the [fol. 292] examiner and we have had the benefit of oral argument. Our conclusions differ in some respects from those recommended by the examiner.

In Investigation and Suspension Docket No. 5139, respondents proposed to increase the rates on bituminous coal, in carloads, from mines in the Brazil-Clinton, Linton-Sullivan, and Princeton-Ayrshire (hereinafter termed Brazil, Linton, and Princeton, respectively) districts in Indiana to Beloit, Wis., other than those on the Chicago, Milwaukee, St. Paul & Pacific Railroad, hereinafter termed the Milwaukee, in the first two districts and those on the Southern Railway and the Algers, Winslow & Western Railway in the latter district; and from all of the Indiana districts and the western Kentucky group to Rockford, Freeport, Dixon, and a number of other Illinois points north and west of Chicago, Ill. Upon protest of Indiana coal-shipping interests and various other parties, the operation of these schedules was postponed for the statutory period and later voluntar-

ily postponed by respondents until the disposition of this proceeding.

Upon petition of the principal railroads operating in the State of Illinois, alleging a violation of section 13 of the Interstate Commerce Act, we entered, in No. 28881, upon an investigation concerning the lawfulness of rates and charges for the intrastate transportation of bituminous coal, in carloads, from Illinois mines to these same northern Illinois destinations, with the view of prescribing such nondiscriminatory, nonprejudicial, and otherwise lawful rates and charges for such traffic as the circumstances may warrant. Petitioners ask that the rates required to be maintained within the State of Illinois be found unlawful in that they cause undue advantage, preference, and prejudice as between persons and localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other, and undue, unreasonable, and unjust discrimination against interstate commerce. An order requiring removal of the alleged advantage, preference, prejudice, and discrimination is sought.

Increases in the intrastate rates on coal, corresponding in many respects to those here proposed on interstate commerce, were proposed by respondent Illinois carriers from Illinois groups to the same destinations in northern Illinois. These were suspended by the Illinois Commerce Commission, and now constitute the subject of investigation in its docket No. 30935. A complaint filed with that Commission, docket No. 31295, concerning the rates from the Fulton-Peoria, Ill., rate group, including those from Atkinson, Ill., to Dixon, was set for hearing with these proceedings and was partly heard on this record.

These proceedings were heard and disposed of under the cooperative plan agreed upon between this Commission and the various State commissions. Accordingly, representatives of the Illinois Commission sat with our examiner at the hearing and two members of that Commission joined us in hearing the oral argument.

[fol. 293] Numerous traffic bureaus and others were represented in these proceedings, including Western Pennsylvania Coal Traffic Bureau, Kentucky Coal Agency, Inc., Railroad Commission of Kentucky, Coal Trade Association of Indiana, Madusa Portland Cement Company, Reynolds Wire Company, Northern Illinois Coal Corporation, Dixon Chamber of Commerce, Sterling Traffic Bureau, Rockford

Chamber of Commerce, Freeport Chamber of Commerce, Belvidere Chamber of Commerce, Fairbanks-Morse & Company, Beloit Commercial Club, and Wisconsin Coal Bureau, Inc.

History of The Adjustment

The coal-rate adjustment with which we are here concerned has been before us a number of times. Its history is recorded in *Intrastate Rates on Bituminous Coal in Illinois*, 182 I.C.C. 537, *Coal to Illinois and Wisconsin*, 232 I.C.C. 151, and *Fairbanks-Morse & Co.* v. *Alton & S. R.*, 251 I.C.C. 181. It will be restated here only to the extent necessary for a clear understanding of the issues.

In 1930, prior to *Intrastate Rates on Bituminous Coal in Illinois*; *supra*, the Illinois commission required a reduction in the intrastate rates to a number of northern Illinois points, for example, from the southern Illinois group to Rockford from $2.17 [2] to $2, or 75 cents less than the rate from the same group to Beloit, 18 miles north of Rockford, and the rate from the Fulton-Peoria group to Rockford became 42 cents less than that to Beloit. Because of these reductions the interstate rates from Indiana and western Kentucky to Rockford and other northern Illinois points were likewise reduced. Subsequently, in *Fairbanks-Morse & Co.* v. *Alton & S. R.*, 195 I.C.C. 365, division 2 found that rates from mines in Illinois, Indiana, and western Kentucky to Beloit were not unreasonable, with exceptions unnecessary here to relate, but that they were unduly prejudicial to Beloit and unduly preferential of Rockford to the extent that they exceeded the contemporaneous rates from the same origins to Rockford by more than 25 cents. On further hearing, 251 I.C.C. 181, we found, among other things, that rates to Beloit from southern Illinois of $2.40 and from Fulton-Peoria of $1.80, the present rates, were not unreasonable, but that they were unduly prejudicial to Beloit and unduly preferential of Rockford to the extent that they exceeded the Rockford rates by more than 15 cents.

The rates on coal from Illinois groups to Rockford, and nearby points such as Freeport and Dixon, have for many years been relatively lower for like distances than rates on like traffic generally applying in this territory. However,

[2] Rates and differences in rates are stated in amounts per ton of 2,000 pounds.

in *Intrastate Rates on Bituminous Coal in Illinois, supra,* we declined to require an increase in intrastate rates to Rockford, Freeport, and Dixon unless and until the rates from the Indiana groups to the same destinations were also increased to a level more nearly commensurate with the general level of rates in this territory. When in *Fairbanks-Morse & Co.* v. *Alton & S. R., supra,* upon further hearing, [fol. 294] we related the rates to Beloit 15 cents over Rockford, an alternative was contemplated which permitted defendants to increase the rates to Rockford or reduce the rates to Beloit, or both, but the intrastate rates from the Illinois groups to Rockford had been prescribed as maximums by the Illinois Commission and, consequently, those rates could not be increased. Also, to increase the rates from Indiana and western Kentucky to these destinations without similar increases from Illinois would disrupt long-existing origin relations.

Accordingly, following the first report and order in *Fairbanks-Morse & Co.* v. *Alton & S. R., supra,* the rates to Beloit were reduced, but as a result of the 15-cent relation prescribed in that proceeding on further hearing, respondents now propose to increase the rates to Rockford, and other nearby points, so they will conform to the requirements in the last-named proceeding and at the same time be on a level more nearly commensurate with the general level of interstate rates in this territory. These proposed increases constitute the subject of the investigation in I. & S. No. 5139 on interstate traffic. As stated, in docket No. 30935 of the Illinois Commission, somewhat similar increases are proposed on intrastate traffic from Illinois origins to these same northern Illinois destinations.

Proposed increases in the rates from Indiana and western Kentucky to these northern Illinois points were before us in *Coal to Illinois and Wisconsin, supra,* decided in 1939. We found the proposed revision justified, except certain rates from the Indiana groups of Princeton and Boonville. Embraced in that approval was the proposal to increase the rate from southern Illinois to Beloit from $2.25 to $2.40, which, with the 1937 general increase, would have resulted in a rate of $2.55. A similar revision was proposed at that time in the intrastate rates from Illinois groups to northern Illinois, including an increase from southern Illinois to Rockford from $2 to $2.15, but this proposed revision was found not justified by the Illinois Commission. As a result

of the action of that Commission, respondents were unwilling to make effective the interstate revision because of the maladjustment which would have resulted between the approved interstate rates and the then-existing intrastate rates. Since that time the rate from southern Illinois to Rockford has been increased to $2.10, so as to reflect the general increase of 1937.

Following our decision in *Coal to Illinois and Wisconsin, supra*, upon petition of the interested carriers, we entered upon a section 13 investigation concerning the lawfulness of the intrastate rates from Illinois producing points to Rockford and other destinations in northern Illinois, in their relation to the interstate rates on like traffic. Subsequently, upon request of respondents, we discontinued that investigation and granted special permission to respondents to cancel the schedules proposed in *Coal to Illinois and Wisconsin, supra*.

[fol. 295] We have here before us substantially the same controversy, with several important exceptions referred to later, that was considered in *Coal to Illinois and Wisconsin, supra*, together with the concurrent proposal to increase the intrastate rates to points in northern Illinois. Except with respect to rates from the DuQuoin district later referred to, the proposed rates to Beloit and Rockford, so far as appears, would in no instance reflect a relation greater than that of 15 cents as prescribed in *Fairbanks-Morse & Co.* v. *Alton & S. R., supra*.

The Lawfulness of the Interstate Rates

Brazil is the base group on Indiana coal traffic to the north and northwest. Except to a number of points in northern Illinois, the Brazil rates are generally the same as those from the Springfield group in Illinois to the same destinations. From the Linton group the rates are usually 10 cents higher than from Brazil; from the Princeton group, 7 cents higher than from Linton; and from the Boonville group 3 cents higher than from Princeton. For the shorter hauls to Illinois these relations are not strictly observed. There is still another Indiana group known as the Evansville group, located south of Boonville, but it is a negligible factor and ships little coal except to nearby points. It has rates generally 10 cents, and in some instances 30 cents, higher than the rates from Boonville, depending upon the destination.

Illinois has 8 coal-producing districts, of which Springfield in central Illinois has long been the largest in area and southern Illinois the largest in production. Up to recent years southern Illinois was regarded as the base Illinois group, but in the last decade the Fulton-Peoria group in northwestern Illinois has materially increased its production, and in *Midland Electric Coal Corp.* v. *Chicago & N. W. Ry. Co.*, 232 I. C. C. 5, and *Fairbanks-Morse & Co.* v. *Alton & S. R.*, *supra*, that group was used as the base from Illinois mines to all points in Iowa and to certain points in southern Wisconsin.

To the north and northwest Fulton-Peoria is generally 30 or 35 cents under Springfield and 60 or 70 cents under southern Illinois, with varying differentials between the other Illinois groups. Rates from the respective Indiana groups 30, 20, 13, and 10 cents under southern Illinois to the Northwest, that is, northeastern Iowa, southeastern Minnesota, and southern Wisconsin, including Beloit, were approved in 1934 in *Illinois Coal Traffic Bureau* v. *Ahnapee & W. Ry. Co.*, 204 I. C. C. 225, and those differences, referred to by the Indiana shippers as the standard differentials, still prevail to practically all of that area. For some years prior to 1930 those differences applied also to most of these northern Illinois destinations, and the Indiana interests ask that they be now restored. Such restoration would have been largely accomplished under the proposed adjustment as approved by us in *Coal to Illinois and Wisconsin*, *supra*, except from the Princeton and Boonville groups. While the instant proposal would change the origin relations to a number of destinations, no attempt is here made by respondents to restore the standard differentials, the avowed purpose being to place upon a higher level the midwestern rates to these northern Illinois destinations, without disturbing the present origin relations more than necessary to reflect the required maximum spread of 15 cents as [fol. 296] between Rockford and Beloit. The result is greatly complicated by the insistence of the Milwaukee upon a so-called dual basis of rates from the Brazil and Linton groups, which under the proposal would be extended also to the Princeton group on traffic to Beloit. More will be said about that later, but first we shall discuss the evidence having a more direct bearing upon the maximum reasonableness of the proposed rates.

Maximum Reasonableness of the Proposed Rates.—Increases, which are generally the same from all of the mines in each of the origin groups, ranging from 5 to 17 cents from Indiana and approximately the same from Illinois, are here proposed in rates from all origins in the Indiana groups and from all except a few origins in the Illinois groups to 70 or more points in northern Illinois. A few of the Illinois rates, mostly from the northern Illinois district, are not proposed to be changed, and others are to be slightly reduced. To Beloit, the increases proposed are 17 cents from the Brazil group, and 12 cents from the Linton and Princeton groups, except that no increase is proposed from mines on the Milwaukee in the first two groups, nor from points on the Southern and the Algers, Winslow & Western in the Princeton group. No change is proposed from points in the Boonville group nor in the rates from the Illinois groups to Beloit. Appendix A hereto illustrates the present and the proposed rate adjustment. It shows the shortest tariff-route distances, the present rates, and those proposed from the 4 Indiana groups and from the Illinois groups to Beloit and 12 representative destinations in northern Illinois, together with the rates to most of those points approved in *Coal to Illinois and Wisconsin, supra.*

Respondents compare the proposed rates with rates prescribed or approved by us from Illinois and Indiana groups to destinations in southern Wisconsin and eastern Iowa, illustrations of which will be found in appendix B hereto. The distances shown in that appendix are the average from all of the mines in each of the groups, and the proposed rates there appearing, where they differ from any of the mines in the respective groups, are the highest proposed from any of the points in each such group. It will be noted that they are, in general, substantially lower than the rates to points in Wisconsin and Iowa with which they are compared. Because several of the parties have compared some of the proposed rates with those to Chicago, the latter are also included in appendix B. Due to unusually severe competitive conditions which are peculiar to Chicago, the rates to that point cannot be given controlling weight in passing upon the propriety of the proposed rates. *Coal to Illinois and Wisconsin, supra,* page 169. The rates set forth in that appendix to Janesville, Fort Atkinson, and Lake Mills, Wis., 8, 51, and 68 miles, respectively, from the Springfield group beyond Beloit, were approved by us in *Fairbanks-*

Morse & Co. v. *Alton & S. R., supra,* wherein the present rates to Beloit from Illinois, Indiana, and western Kentucky were found not unreasonable.

[fol. 297] The level of the class rates and of many of the commodity rates is approximately the same to northern Illinois as to the southern portion of Wisconsin and is usually higher in Iowa west of the Mississippi River than in Illinois, but on coal the rates to southern Wisconsin and to Iowa, most of them approved by us, are on a substantially higher level than either the present or the proposed rates to northern Illinois. This relation in the coal rates is due chiefly to the reductions in the Illinois intrastate rates required by the Illinois Commission and, in lesser degree, to the influence upon these rates to northern Illinois of the relatively low rates to Chicago. To the 12 representative points in northern Illinois used by respondents and shown in appendix A, the proposed rates average 84.6 percent from the Fulton-Peoria group, 75.6 percent from the Springfield group, and 77.6 percent from the Brazil group of the so-called Midland scale used as the basis for the maximum reasonable rates from Fulton-Peoria to Iowa destinations prescribed in *Midland Electric Coal Corp.* v. *Chicago & N. W. Ry. Co., supra.*

Perhaps the best measure of the reasonableness of the rates here proposed from the nearer mines or groups is the distance scale of rates referred to herein as the Indiana-Illinois scale prescribed in *Coal Trade Assn. of Indiana* v. *Baltimore & O. R. Co.*, 190 I. C. C. 743, for distances up to 300 miles from the 4 Indiana groups to destinations in eastern-central Illinois. We have several times referred to that scale as "relatively low", but it is on a higher level than all except a few of the numerous rates in this Indiana-Illinois territory portrayed upon this record. This scale, like the Midland scale, has become somewhat distorted for present application by the general 1937 increases of 5 cents for rates up to and including $1, 10 cents for higher rates up to and including $2, and 15 cents for rates above $2. In appendix C hereto these two scales have been reshaped so as to reflect in an appropriate manner those general increases, and the Indiana-Illinois scale has been extended beyond 300 miles. The scales there set forth are the Indiana-Illinois and Midland scales as used in this report. To the 12 representative northern Illinois destinations, the proposed rates average 93.5 percent of the Indiana-Illinois

scale from Fulton-Peoria, 159 miles, 91.5 percent from Springfield, 225 miles, 90 percent from Brazil, 256 miles, 88.3 percent from Linton, 293 miles, 84.3 percent from southern Illinois, 354 miles, 83.9 percent from Princeton, 358 miles, and 82.1 percent from Boonville, 392 miles.

To Beloit the present rates from Illinois, not proposed to be changed, average 100 percent of the Indiana-Illinois scale and 89.1 percent of the Midland scale from Fulton-Peoria, 170 miles, and 91.6 and 74.3 percent, respectively, from southern Illinois, 394 miles, and under the proposed adjustment the Indiana rates would average 102.3 and 84.3 percent, respectively, from Brazil, 269 miles, 95.8 and 78.6 percent from Linton, 302 miles, 89.7 and 72.8 percent from Princeton, 379 miles, and 85.2 and 68.9 percent from Boonville, 415 miles.

It is, of course, recognized that the rates from the more distant groups are not and probably should not be based primarily upon distance, but the foregoing scale percentages are helpful as indicating that the proposed rates on the average reflect quite uniformly the common practice in adjusting differentially-related coal rates of according diminishing weight to distances and increasing weight to competition as the length of the haul increases.

[fol. 298] The proposed rates to Beloit and to the northern Illinois destinations are generally on a lower level than the rates to points in Wisconsin and Iowa just beyond the destination territory with which we are here concerned, as illustrated in appendix B. Thus, from the Springfield and Brazil groups the rates to Janesville are, respectively, 89.2 and 93.3 percent of the Midland scale, as compared with 78.7 and 84.3 percent reflected by the respective rates from the same groups to Beloit under the proposed adjustment. The rates from the same groups to Tipton, Iowa, are, respectively, 88.8 and 80.1 percent of the Midland scale, as compared with 75.6 and 77.7 percent reflected by the respective proposed rates from the same groups to the 12 northern Illinois destinations, and with 81.4 and 67.7 percent reflected by the proposed rates from those groups to Sterling, Ill., one of the 12 destinations nearest to Iowa.

It will be noted that in the use of mileage throughout this report, wherever practicable, we have employed the distances over the shortest tariff routes as distinguished from the distance over the short tariff routes, as urged by some of the parties. The former method employs the distance

from each mine or shipping point only once, regardless of the number of carriers that may be serving it. The latter method averages the distances from each mine or shipping point in the group over the shortest route of each carrier serving that mine or shipping point. This latter basis is slightly more favorable to Indiana than to Illinois because of the relatively smaller groups in the former than in the latter, and respondents prefer that method because in their opinion it comes closer to reflecting the actual service performed by them. In *Midland Electric Coal Corp. v. Chicago & M. W. Ry. Co.*, 225 I. C. C. 349, 352, and 232 I. C. C. 5, 6, we discussed the merits of the respective methods of determining distances for the purpose of fixing rates on coal, and found that the use of those over the shortest tariff routes would best serve that purpose, bearing in mind, of course, that the particular distance basis used "is an important factor in determining the level of the rates." The reasons which impelled us to use the shortest tariff-route basis in that proceeding are equally persuasive here.

The Western Pennsylvania Coal Operators Association urges approval of the proposed adjustment on the ground that it would assist in remedying an alleged rate maladjustment; first, between the rates from Indiana, Illinois, and western Kentucky, hereinafter sometimes referred to as the midwestern mines, to points in southern Wisconsin, as compared with those from the same mines to northern Illinois, by raising the rates to the latter area more nearly to the basis of the rates to the former area; and second, between the midwestern mines and the lower west-bank Lake Michigan docks to points in southern Wisconsin by restoring, in part, the relations between the lake docks and southern Illinois to southern Wisconsin prescribed or approved in 1924 in *Lake Dock Coal Cases*, 89 I. C. C. 170. The rela- [fol. 299] tions there approved contemplated a rate from southern Illinois to Beloit and other points in southern Wisconsin of $2.75. As stated, the present rate from southern Illinois to Beloit, not here proposed to be changed, is $2.40 and that proposed to Rockford, less distant than Beloit from southern Illinois by 31 miles, is $2.25. On May 1, 1939, the Wisconsin Public Service Commission, as a part of a State-wide readjustment of coal rates, reduced substantially the rates from Lake Michigan docks to Beloit and other points in southern Wisconsin. Because of this and other material changes in condition on October 3, 1939,

in *Northwestern Coal Dock Operators Assn.* v. *Chicago & A. R. Co.*, 234 I. C. C. 679, we vacated our outstanding order in *Lake Dock Coal Cases, supra.* Of the coal received in Wisconsin in 1937, 9 percent came all-rail and 68 percent ex-lake, a total of 77 percent, from the eastern or Appalachian fields, and 23 percent came from the midwestern mines; in 1940 those percentages were respectively, 8, 68, and 76 from the eastern mines and 24 from the midwestern mines.

From the foregoing we are convinced that the proposed interstate rates do not exceed the maximum of reasonableness, except in those instances where from particular mines certain of the proposed rates exceed what may be called the normal group bases, to which further reference will be made later.

The Origin Relations of the Rates.—There is keen competition between the Indiana, Illinois, and western Kentucky groups in the sale of coal in this destination territory. As is usual in coal-rate proceedings of this nature, the mine operators in certain of the origin groups indicate their dissatisfaction with the rate relations between their particular groups and one or more of the other groups in the same adjustment. Practically every phase of this adjustment, both present and proposed, was made the subject of criticism. The Illinois shippers contend that the rates from Indiana are now on a lower level than those from Illinois to those destinations. They urge that the necessity for complying with the requirements in another proceeding of establishing a 15-cent relation between Rockford and Beloit should not be permitted to serve as an excuse for increasing by as much as 17 cents the rates to a number of points in northern Illinois when that requirement could be met by a maximum reduction of 15 cents to one point, Beloit. They ask that, regardless of what is done with respect to the rates from Indiana, no increase be made in the rates from Illinois.

The Indiana interests, on the other hand, attempted to prove that their rates to these destinations are now relatively higher than those from Illinois, and they are opposed to any increase in their rates without a like or greater increase in the rates from Illinois. They are concerned primarily with the relation of the rates between the various Indiana groups and between those groups on the one hand, and southern Illinois or Springfield, on the other.

While, as stated, for some years prior to 1930 the so-called standard differentials applied to most of those northern Illinois destinations, there appears to have been then, as now, no fixed relation either between the Indiana groups or between those groups and southern Illinois or [fol. 300] Springfield to Rockford, Freeport, and Dixon, the principal coal-consuming points in this destination territory. To Rockford, for example, from January 1, 1910, to July 18, 1925, the rates from Indiana were lower than those from southern Illinois by from 20 to 27 cents from Brazil, 14 to 15.2 cents from Linton, 4.5 to 12 cents from Princeton, and higher than from southern Illinois by from 13 to 21 cents from Boonville. On July 19, 1925, respondents voluntarily reduced the rates from the respective Indiana groups to Rockford by 5, 6, 8 and 28 cents, and made no reductions in the rates from any of the Illinois groups. This resulted in Indiana rates lower than from southern Illinois by 30, 25, 18, and 15 cents, respectively. When in 1930 the Illinois commission required a reduction in the southern Illinois rates to Rockford of 17 cents, the differences were changed to 13 cents from Brazil, 8 cents from Linton, and 1 cent from Princeton under, and 2 cents from Boonville over, southern Illinois, for differences in distance of 112 and 63 miles under, and 12 and 46 miles over, southern Illinois, respectively. These are the rate differences as they exist today, except from Brazil mines on the Milwaukee and from mines on that road and the Illinois Central in the Linton group, to which we shall now direct our attention.

Prior to 1930 the rates to the northern Illinois destinations to which the proposed rates are to apply were, with few exceptions, the same from the Springfield and the Brazil groups, each group being 30 cents under southern Illinois. In that year this relation was disrupted by the reduction referred to in the Illinois intrastate rates, and which precipitated our investigation in *Intrastate Rates on Bituminous Coal in Illinois, supra.* Folowing the carriers' failure in that proceeding to bring about the establishment of the former intrastate rates, the Milwaukee, which serves midwestern mines only in the Brazil and Linton groups, proposed to reduce the rates from mines in those groups served by it to Rockford, Freeport, and certain intermediate points over its single-line routes by 17 cents, the same amount by which the Illinois rates to those points had been

reduced. We suspended that proposed adjustment and in *Coal from Indiana and Illinois*, 197 I. C. C. 245, 200 I. C. C. 689, found it not justified and ordered its cancelation. In *U. S. v. Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, the Supreme Court found our order invalid, among other reasons because it was not supported by adequate findings of fact. The proposed rates became effective in 1934. In 1936, the Milwaukee increased its single-line rates from the Linton group to Rockford and Freeport by 5 cents, so as to make the differential Linton over Brazil on its line 10 cents. Shortly thereafter, the Illinois Central met the action of the Milwaukee by making like reductions in its single-line rates from mines on its line in the Linton group to northern Illinois destinations served by it, including Rockford and Freeport. With the addition of the 1937 general increases, the rates which then resulted are those now in effect. Since the increases here proposed to northern Illinois are generally the same from all of the origins in each of the Indiana and Illinois groups, the dual basis of rates where now in effect to those destinations is to be continued.

[fol. 301] To Beloit, the rates from all of the mines in the respective Indiana groups are now the same, but under respondents' proposal a dual basis of rates would apply to that point, not only from the Brazil and Linton groups, but also from the Princeton group. The Beloit rates are at present higher than those to Rockford by 30 cents from Illinois, except a few points in northern Illinois, and by 30 cents or smaller amounts from Indiana. For example, from southern Illinois the present rate is $2.40 to Beloit and $2.10 to Rockford. As stated, the Beloit rate was found not unreasonable in *Fairbanks-Morse & Co. v. Alton & S. R.* *supra*. Hence, to bring about the 15-cent spread as prescribed in the latter proceeding, it is proposed to increase the Rockford rate from southern Illinois by 15 cents to $2.25. So as not to disturb existing origin relations, respondents propose corresponding increases in the rates to Rockford from all groups in Indiana, Illinois, and western Kentucky. Thus, the joint-line rate from Brazil to Rockford is proposed to be increased by 15 cents to $2.12, and in order to achieve the required 15-cent maximum spread, the Brazil rate to Beloit over the joint-line routes is to be increased by 17 cents to $2.27. But from the Brazil mines on the Milwaukee, as the increase to $1.95 in the single-line

rate to Rockford effectuates the required 15-cent spread under the present Beloit rate of $2.10, no increase to the latter point is proposed from those mines. The 17-cent spread between the present and the proposed single-line and joint-line rates from Brazil to Rockford and other northern Illinois destinations is thus proposed to be extended also to Beloit.

The same circumstances have largely controlled the proposal from the Linton group to Beloit. The joint-line differential of 5 cents Linton over Brazil, which is now maintained to some of the northern Illinois points is to be reflected also in the Beloit joint-line rates from these districts. Thus, the joint-line rate of $2.20 from Linton to Beloit is to be increased by 12 cents to $2.32. The Milwaukee's single-line rate of $2.20 from Linton to Beloit, which now reflects a 10-cent differential over Brazil mines on that road, is not to be disturbed. The difference in the average distances from these districts to Beloit is 33 miles, which according to the Milwaukee warrants a differential of 5 cents about as readily as one of 10 cents.

From the Princeton group the present rate to Beloit over all routes is $2.27. In order to continue Princeton 7 cents over the proposed joint-line rate of $2.32 from Linton, the Princeton rate is to be increased 12 cents to $2.39, except from mines on the Southern and the Algers, Winslow & Western. The latter serves 4 origin points and the Southern 6 (at which there are now only 2 producing mines) in the Princeton group. The Southern is the only carrier serving the Boonville group. It serves a few Illinois mines in the Belleville group, but they are now producing little coal. It does not reach the destination territory. The Southern has declined to increase either the $2.27 rate applying over its line from Princeton or the present rate of $2.30 from Boonville to Beloit.

[fol. 302] The Southern recognizes that the rates on coal to this destination territory are low and might well be increased, but it fears that any increase in the present differentials, Princeton and Boonville over Linton, and a consequent unfavorable relation to southern Illinois would practically eliminate the Indiana mines which it serves from the market at these destinations. The present relations between Linton or southern Illinois on the one hand, and Princeton and Boonville on the other, to the northern Illinois destinations are not uniform, but to Beloit they are

the customary 13 cents Princeton under southern Illinois, 7 cents Princeton over Linton, and 3 cents Boonville over Princeton. By reason of the refusal of the Milwaukee to increase its single-line rates from Brazil and Linton to Beloit, and the consequent insistence by the Southern upon a like stand from its mines in the Princeton and Boonville groups, the present 7-cent differential Princeton over Linton is to be retained only as between the Linton mines on the Milwaukee and the Princeton mines on the Southern and the Algers, Winslow & Western, and between the Linton and Princeton mines served by respondents other than the three just named; but as between the Linton rate of $2.20 to be continued from mines on the Milwaukee and the proposed Princeton rate of $2.39 from mines on respondents other than the Southern and the Algers, Winslow & Western, the differential is to be widened from 7 to 19 cents. This latter differential is the same as that between the Linton mines on the Milwaukee and the Illinois Central on the one hand, and all of the Princeton mines except a few located at 2 points on the Baltimore & Ohio Railroad on the other, under the present and the proposed rates to Rockford.

The major distinction between the instant proposal and that which we approved in 1939 in *Coal to Illinois and Wisconsin, supra*, lies in the proposed perpetuation and extension here of the dual basis of rates from the Indiana mines. Because the dual basis was not proposed to be continued in that proceeding, we had no occasion to pass upon it there. The question of its lawfulness is squarely before us here. In 1934, when in *Coal from Indiana and Illinois, supra*, we found not justified the initial attempt of the Milwaukee to precipitate this dual basis, we did so chiefly on the ground that it would provoke further reductions and eventually disrupt substantial portions of the midwestern coal-rate structure. As stated, shortly after the Milwaukee's reduced rates became effective the Illinois Central established the same basis of single-line rates over its road from Linton mines served by it to a number of northern Illinois destinations. Now it is proposed to extend this basis to the Princeton group at the origin end and to Beloit at the destination end. The record is convincing that once this dual basis becomes effective at Beloit, it will quite certainly spread to other points in Wisconsin served by the Milwaukee, of which there are many.

Four of the 30 origin points in the Brazil group and about 9 of the 31 origins in the Linton group on coal to this destination territory are served by the Milwaukee. The Illinois Central serves 4 points in the Linton group. The other respondents serving these districts are the Baltimore & Ohio, Chicago & Eastern Illinois, New York Central, [fol. 303] Pennsylvania, and Indiana railroads in the Brazil group, and the New York Central, Pennsylvania, Chicago & Eastern Illinois, and Chicago, Indianapolis & Louisville railroads in the Linton group. Of the 12 representative northern Illinois destinations referred to, the Milwaukee has single-line rates to 5 from the Brazil and Linton groups, and the Illinois Central has single-line rates to 4 from the Linton group, which are lower than the rates of the competing carriers from those respective districts to the same destinations. The average distance from all origin points in the Brazil group to the 12 destinations is 256 miles, the average present rate is $1.89 and that proposed $1.98. From the 4 Brazil points on the Milwaukee to the 5 destinations served by it, the average distance is 240 miles, and from the Brazil points on the Chicago & Eastern Illinois, 8 in all, to those same destinations (over routes in some instances in connection with the Milwaukee), it is 247 miles, or only 7 miles longer, but the present rates average $1.80 and those proposed $1.94 over the single-line routes of the Milwaukee and $1.92 and $2.02, respectively, over the routes of the Chicago & Eastern Illinois. The average distance over all of the routes maintaining the average rate of $1.92 (many of which are in connection with the Milwaukee) is 254 miles.

From all of the Linton mines the average distance to the 12 destinations is 293 miles. The present rates average $1.94 and those proposed $2.03. From the Linton points on the Milwaukee to the 5 representative destinations to which that respondent's single-line rates apply, the average distance is 278 miles, or 4 miles greater than the average of 274 miles to the same destinations from the 5 origins on the Chicago & Eastern Illinois in that district. From the Illinois Central points in this group to the 4 representative destinations to which it maintains single-line rates, the average distance is 317 miles, or 43 miles greater than over the routes of the Chicago & Eastern Illinois. The average present rate of the Milwaukee and the Illinois Central is $1.90 and that proposed $2.01; over the Chicago &

Eastern Illinois routes to the same destinations, in a number of which the Milwaukee and the Illinois Central participate as line-haul delivering carriers, the average present rate is $1.97 and that proposed $2.08. In other words, the present and the proposed rates of the Milwaukee and the Illinois Central are lower by 7 cents for greater average distances of 4 and 43 miles, respectively, than those from mines on the Chicago & Eastern Illinois applying over routes in which either the Milwaukee or the Illinois Central participate to each of the destinations. The single-line rates of the Milwaukee from the Brazil and Linton groups apply generally for all deliveries at each destination to which they are published; for example, to Rockford the rates apply for deliveries on 4 destination carriers serving that point, the Milwaukee absorbing the switching charges of the other lines.

To Beloit, the relative situation with respect to the dual basis of rates as proposed is little different from that to northern Illinois. Thus, from the Milwaukee origins in the [fol. 304] Brazil district the average distance to Beloit is 244 miles; from points on the Chicago & Eastern Illinois it is 262 miles; and from points on the Baltimore & Ohio, 261 miles. The proposal is to continue the present rate of $2.40 from the Milwaukee mines and increase the rate to $2.27 from the other mines. From the Linton group the distance from the origins on the Milwaukee is 287 miles and from those on the Chicago & Eastern Illinois 288 miles, but the rate from the former is to be $2.20 and from the latter $2.32. From Princeton the average distance from the 6 points on the Southern to Beloit is 366 miles and from the 4 origins on the Algers, Winslow & Western it is 370 miles, as compared with 352 miles from the mines on the Chicago & Eastern Illinois and 376 miles from those on the New York Central, but the rate, which is the same now from the entire group, is to be $2.27 from the mines on the Southern and the Algers, Winslow & Western and $2.39 from the other mines in the group.

As stated, both the Milwaukee and the Illinois Central join in the so-called normal rates, by which is meant the rates maintained or proposed by most of respondents, from mines in the Brazil or Linton districts to the same destinations to which they maintain their lower single-line rates. They also participate in the rates, all of which are joint-line, from the Princeton and Boonville groups to the same

destinations. Thus, those two respondents participate in rates from the respective Indiana districts which reflect differences that, between many of the origins, are much greater than the so-called standard differentials. To Rockford, for example, the present and the proposed differential between the Brazil origins on the Milwaukee and the Linton origins on a majority of respondents is and would be 22 cents, instead of the customary 10 cents; between the Linton points on the Milwaukee or the Illinois Central and the Princeton mines the present and the proposed differential is and would be 19 cents, instead of the usual 7 cents; and between those same Linton origins and the Boonville mines the difference reflected by the present and the proposed rates is 22 cents, instead of the standard differential of 10 cents or the differential herein approved of 7 cents. What has just been said would be true also under the proposed adjustment to Beloit.

From several of these origin groups to a number of points in the destination territory the present and the proposed rates from certain mines are higher than the so-called normal rates. For example, from the Brazil and Linton groups to Byron, Ill., one of the 12 representative points, the rates from the mines on the Pennsylvania and the New York Central are 7 cents higher than those from the mines on the other respondents, except the Milwaukee, in those groups, for average distances only 24 miles from Brazil and 11 miles from Linton greater than the average from all mines in the respective districts. So also, to Forreston the normal proposed rate from Princeton is $2.12, but from mines on the Algers, Winslow & Western in that group it is $2.19, although the average distance from the latter mines is 28 miles less than the average from the group. A like situation prevails to some of these destinations from several of the Illinois groups, as illustrated in appendix A. The record reveals no explanation for such rates which are higher than the so-called normal rates from the same districts to the same destinations.

[fol. 305] Respondents would anticipate the same relative movement from the Brazil and Linton groups under the proposed rates as under the present rates. In a recent period said to be representative, but not detailed of record, of the total Brazil and Linton tonnage moved to Rockford, the Milwaukee transported under its single-line rates 95.4 percent from the Brazil group and 78.5 percent from the Linton

group. There was some movement from the other mines in each of the groups, but apparently it was relatively small. Nevertheless, the only justification offered by the Milwaukee for insisting on lower rates than those of the other carriers, except the Illinois Central from the Linton group, is its fear that there would be relatively little movement from mines served by it if its rates were made the same as those from the mines on the competing carriers to the same destinations. Apparently this fear is based chiefly upon the belief that the Brazil rates should not exceed the rates to the same destinations from the Springfield group, which is the case generally to points in the Northwest, as that term is herein used. As stated, the Southern is reluctant to increase its Princeton and Boonville rates to Beloit without an increase in the rates from southern Illinois to the same point. It seems plain, however, that the attitude of both the Southern and the Illinois Central in this respect is motivated largely by the relatively low rates from the Brazil and Linton groups maintained or herein proposed by the Milwaukee. Respondents appear to be agreed that all of these rates are relatively low and should be increased, and that, given a fair relation between the respective origin groups, a single rate from all of the mines in each group to each destination is much to be preferred to any multiple basis of rates such as that now in effect and as is here proposed.

The transportation conditions over the single-line routes of the Milwaukee and the Illinois Central do not differ materially from those over the joint-line routes to the same destinations from other mines in the same group, in many of which latter routes, as stated, the Milwaukee and the Illinois Central participate. There is no important difference in the average distances over those respective routes. Normally, coal sales turn on a price difference of as little as a few cents a ton. Plainly, therefore, only by the establishment and maintenance of a single rate basis from each of these coal-rate districts can unjust discrimination and undue prejudice be avoided. Under the circumstances recited, an extensive showing of injury through the loss of tonnage to particular coal shippers or consumers by reason of the discriminatory rates here before us is not required. *United States* v. *Trucking Co.*, 310 U. S. 344. The situation presented is in principle similar to that before us in *Fairbanks-Morse & Co.* v. *Alton & S. R.*, *supra*, pages

201-206, wherein we found that the maintenance of higher rates from 6 mines in the southern Illinois district to Janesville and Clinton Junction, Wis., was unduly prejudicial and preferential to the extent that they exceeded the contemporaneous rates to the same destinations from the other mines in the same district.

In *U. S.* v. *Chicago, M. St. P. & P. R. Co., supra*, the Supreme Court pointed out that we had "not adjudged the fairness of the relation now subsisting between Illinois and Indiana rates;" that "the whole situation is subject to the power of the Commission," in that we "may fix the fair relation between one line and another, and may build the [fol. 306] structure of the rates accordingly." This midwestern rate adjustment to these destinations cannot be stabilized, and fair and reasonable origin and destination relations maintained, so long as a multiple-rate basis applies from any of the important origin districts, such as the Brazil and Linton districts in Indiana. This is evident from the fact that the lower single-line rates of the Milwaukee from the Linton district have been met by the Illinois Central from mines in that district served by it, and from the proposal here to extend the dual basis to southern Wisconsin and to the only remaining Indiana group of any importance. Clearly, the time has come when these discriminatory practices and maladjustments should be eliminated. Accordingly, the record herein being adequate for the purpose, we shall now proceed to a determination of the fair and reasonable relations which should exist between the respective origin groups, and between the Indiana and the Illinois groups, to these destinations; and having made that determination, we shall except respondents, so far as lies within their respective powers, to establish and observe those relations.

The Fair and Reasonable Origin Relations.—In making this determination we shall leave out of consideration the rates from Alpha, Ill., and from the northern Illinois district to these destinations in northern Illinois for the reasons that most of those rates vary from the respective origins as well as to the different destinations, the movement thereunder is relatively small, or a large portion of it moves regularly by truck. Also, we shall exclude the rates to northern Illinois destinations from Atkinson because, with few exceptions, they are now higher than on the basis of the Indiana-Illinois scale and therefore on a

higher level than the reasonable interstate basis herein approved from Indiana to the same destinations. We shall take into consideration the rates from the Indiana groups, except for the reasons stated the Evansville group, and the rates from all Illinois groups, Fulton-Peoria and south or southeast thereof, together with the rates from Victoria and Rushville, Ill. As stated, the chief concern of the Indiana shippers, as well as of the Milwaukee, is with competition from the southern Illinois or the Springfield group.

The operating conditions of respondents from the respective Indiana and Illinois groups to these northern Illinois destinations are in general substantially similar. We have so found in a number of cases. See *Illinois Classification*, 55 I. C. C. 290, 301; *Intrastate Rates Within Illinois*, 60 I. C. C. 92; *Jones & Laughlin Steel Corp.* v. *Baltimore & O. R. Co.*, 96 I. C. C. 682, 691; *Burlington Shippers Asso.* v. *Atchison, T. & S. F. Ry. Co.*, 109 I. C. C. 694, 698; *Intrastate Rates on Bituminous Coal in Illinois*, *supra*, page 555. No serious attempt was made upon this record to show the contrary. Differences in competitive conditions, where they exist, reflect themselves largely in the statistics of production and tonnage moved from the respective groups, which will now be considered.

The years 1923 and 1936 are generally regarded as approximating normal in the coal industry and will be used as a base. The year 1941 is the latest period for which fairly complete tonnage results are of record. To Rockford, Freeport, and Dixon 369,492 tons moved from Illinois and 99,661 tons from Indiana in 1936, and 431,472 and 247,407 tons, respectively, in 1941, an increase of 16.8 percent from Illinois and 148.2 percent from Indiana. To Beloit, Illinois mines shipped 85,432 tons in 1936 and 80,100 tons in 1941, as compared with 35,346 and 51,450 tons, respectively, from Indiana, a decrease from Illinois of 6.2 percent and an [fol. 307] increase from Indiana of 45.6 percent. In that period the movement to Beloit and 7 of the representative northern Illinois destinations increased 4 percent from Illinois and 121.4 percent from Indiana.

The total movement to all Illinois destinations, except to points in the Chicago switching district and East St. Louis, in 1941 was 104.4 percent of that in 1923 from Illinois and 86.3 percent from Indiana, and the 1941 tonnage was greater than in 1936 by 46.5 percent from Illinois and 20.8 percent from Indiana. To all Indiana destinations, except

those in the Chicago switching district, the total tonnage declined from 1936 to 1941 by 12.5 percent from Illinois and increased by 32.5 percent from Indiana, and the 1941 tonnage was only 38.2 percent of that in 1923 from Illinois, as compared with 77.8 percent from Indiana. The total tonnage shipped from Illinois mines in 1941 was 61.5 percent, and that from Indiana mines 85.9 percent, of that in 1923.

From the respective groups the ratio of the 1941 total tonnage to that of 1923 was 222.9 percent from Fulton-Peoria, 96.6 from northern Illinois, 67.1 from central Illinois, which includes Springfield, 44.9 from Belleville, 92.2 from DuQuoin, and 48.6 from southern Illinois, as compared with 37.4 percent from Brazil, 75 from Linton, 288.1 from Princeton, and 63.7 from Boonville. Fulton-Peoria has increased its tonnage from 3.6 percent of the total Illinois production in 1923 and 8.2 percent in 1936 to 13.2 percent in 1941. The Brazil group has dropped from 34.5 percent of the total Indiana production in 1923 to 15 percent in 1941, in which year it shipped only 19 percent of the total Indiana coal moved to all Illinois destinations. The Princeton group during that period increased its production from 11.8 to 39.6 percent of the total Indiana production, the latter percentage for 1941 being for the first time greater than that for the Linton group (38.1 percent).

The ratio of the tonnage produced in the Boonville group to the total in Indiana has declined from a peak of 32.5 percent in 1928 to 8 percent in 1936 and 7.3 percent in 1941. There are 8 origin points in the Boonville group, but the only mine in the group which has been for sometime producing any substantial quantity of coal is that of the Sunlight Coal Company located about 10 miles across country from another mine in the Princeton group, both producing coal from the same seam. The Sunlight Company urges that it be accorded the Princeton rates and that the Princeton group as so constituted be given the usual 7-cent differential over the lowest present rates (those from the mines on the Milwaukee and Illinois Central) from the Linton group. In 1941 and the first 6 months of 1942, the only periods for which the tonnage statistics are of record, Boonville shipped only 3,063 tons to 7 of the principal northern Illinois destinations and to Beloit. The southern Illinois shippers favor the merger of the Boonville with the Princeton group, and there appears to be no dissent there-

from by any party to this proceeding. The shortest routes from a number of mines in the Princeton group to points in the destination territory are longer than the routes from mines in the Boonville group to the same destinations. As appears from appendix D hereto, a merger of the two [fol. 308] groups would increase the Princeton distance by only 8 miles, both on the average to the 12 representative northern Illinois destinations and to Beloit. We find that the Boonville rates to all of these destinations in northern Illinois and to Beloit should not exceed the rates herein approved from the Princeton group to the same destinations.

In appendix D may be found the average distances and the average rates, present and proposed, from the respective Illinois and Indiana groups to the 12 representative destinations and to Beloit. The average of the proposed rates to the 12 destinations is $1.98 for 256 miles from the Brazil district, and $2.03 for 293 miles from the Linton district, or a spread of 5 cents for 37 miles. So also, to Beloit the average of the rates under the proposed adjustment is $2.25 from Brazil, 269 miles, and $2.28 from Linton, 302 miles, or a spread of only 3 cents for a difference in distance of 33 miles. The standard differential, in effect generally to the Northwest, is 10 cents. As stated, the decline in the volume of the movement from the Brazil district since 1923 has been much greater than that from the Linton district, and that from the Princeton district has substantially increased. We find that the differential between the Brazil and Linton districts to these destinations, including Beloit, should be 10 cents.

If the proposed rates from the Indiana groups which are higher than the so-called normal basis were reduced to the latter basis, and if the single-line rates of the Milwaukee and the Illinois Central from the Linton district were increased to the normal basis proposed from the other mines in that group, the rates from all of the Brazil mines made 10 cents less, and the Princeton-Boonville rates made 7 cents more, the resulting rates to the 12 destinations would average $1.95 from Brazil, $2.05 from Linton, and $2.12 from Princeton-Boonville. Such rates, referred to hereinafter as approved rates, compare favorably with the proposed rates from the Illinois groups to the same destinations, with the exception of certain of the rates from the Fulton-Peoria, Danville, and Du Quoin groups.

To Geneva, the nearest point in this destination territory to Chicago, the present rate from Fulton-Peoria, 189 miles, is $1.65 and that proposed $1.70, except that from 7 origins (out of 27 origins in the district) on the Chicago & North Western and Toledo, Peoria & Western railroads the rate is $1.50 and that proposed $1.55. These rates appear to be out of line with the rates to other nearby points, such as DeKalb. The rate to the latter point is $1.50 and that proposed $1.55, for 166 miles. The Fulton-Peoria rate to Chicago is $1.65, for 186 miles. The average distance to Geneva, from the points taking the present rate of $1.50 is 171 miles, or only 18 miles less than from the points taking the present rate of $1.65. That difference is the same as that between the distance from the Peoria mine and the average distance from the Fulton County mines on the Chicago & North Western, for which that respondent maintains the same rate of $1.50 to Geneva. The Chicago & North Western [fol. 309] participates in all of these Fulton-Peoria routes to Geneva. We find that a reasonable and non-discriminatory rate under section 13 of the act from all of the Fulton-Peoria mines to Geneva may not be less than $1.60.

The Danville group is served by the New York Central and Chicago & Eastern Illinois, and the Du Quoin group is served only by the Illinois Central. It will be noted from appendix D that the proposed rates to the 12 destinations average $1.90 from Danville for 214 miles and $1.83 from Springfield for 225 miles, or a greater rate from Danville by 7 cents for a shorter distance by 11 miles. Danville is one of the smallest groups in Illinois and its movement is relatively light. To 8 of the 12 destinations the distances from Danville are shorter than those from Springfield, but to only 5 of those 8 destinations are the proposed rates the same as those from Springfield. To the other 3, namely, Amboy, DeKalb, and Geneva, the proposed rates of $1.89, $1.85, and $1.85, respectively, are 10 or 14 cents higher for shorter distances by from 15 to 64 miles from Danville than from Springfield, and are from 102.8 to 105 percent of the Indiana-Illinois scale. The present rate from the Danville group to each of these 3 destinations is $1.80, and we find that no increase in this rate to those destinations is here warranted. By combining the present rate to those 3 points with the proposed rates to the other 9 of the 12 destinations, the resulting average of the rates, herein approved under section 13 of the act, from the Danville group is $1.88, which

for the average distance of 214 miles is 94 percent of the Indiana-Illinois scale and 82.1 percent of the Midland scale.

The average of the proposed rates from the Du Quoin group to the 12 destinations is $2.10, for an average distance of 300 miles, which is relatively high compared with the proposed average of $2.05 for 327 miles from Belleville and $2.14 for 354 miles from southern Illinois. Du Quoin is not uniformly related to either Belleville or southern Illinois to these destinations, but in general it takes a somewhat higher rate than the former and a slighly lower rate than the latter. The distance from Du Quoin to each of the 12 destinations is the same or less than that from Belleville, and on the average is less by 27 miles. In *Midland Electric Coal Corp. v. Chicago & N. W. Ry. Co., supra*, we prescribed differentials of 5 or 10 cents, Belleville under Du Quoin, for average differences of from 17 to 48 miles to the respective Iowa zones. To Chicago, the Du Quoin and Belleville groups take the same rates. We find that the proposed Du Quoin rates have not been justified under section 13 of the act where and to the extent that they exceed the proposed Belleville rates to the same destinations. The rates thus approved, as shown in appendix A to this report, from Du Quoin to the 12 destinations average $2.06, or 89.6 and 73.8 percent of the respective scales.

The average approved rate of $1.95 from Brazil to the 12 destinations for 256 miles is 88.6 percent of the Indiana-Illinois scale and 76.5 percent of the Midland scale, which compares favorably with the foregoing average approved rate from the Danville group, with the average proposed rate of $1.83 to the same destinations from Springfield for 225 miles, 91.5 and 75.6 percent of the respective scales, and with the average proposed base rate of $1.59 from Fulton-Peoria for 159 miles, 93.5 and 84.6 percent of the scales. The average rate of $2.12 approved from the Princeton-Boonville group for 366 miles is 83.5 and 67.9 percent of the respective scales, as compared with an average proposed rate of $2.14 for 354 miles from southern Illinois, 84.3 and 68.6 percent of the scales.

[fol. 310] From Linton the approved rates average $2.05 for 293 miles, or 89.1 and 73.5 percent of the scales, and compare favorably with the approved rates from the Du Quoin group, as well as with the average proposed rate of $2.03 from the Centralia group, 283 miles, which is 88.3 and 72.8 percent of the respective scales. As will be noted from

appendix D, these Linton rates are on a slightly higher level than those proposed and herein approved from Belleville, the latter averaging 83.3 and 68.1 percent of the scales. Belleville is one of the largest midwestern districts, but in recent years the movement therefrom to these destinations, excepting only Rockford, has been relatively small, especially as compared with that from the Linton, Princeton, and southern Illinois groups. With few exceptions, the uniform differential, Belleville under southern Illinois, to these destinations, to Chicago, and to numerous points in the Northwest is, and long has been, 10 cents. There is upon this record no adequate support for requiring a change in that differential.

In considering the level of the rates from the respective Indiana and Illinois groups to these destinations, as well as to Beloit, it must be borne in mind that the differential between Linton and Princeton, the two most important Indiana groups, is only 7 cents for an average difference in distance to these 12 destinations of 65 miles (73 miles from the combined Princeton and Boonville groups). That differential is on a lower level than any other between important groups in this midwestern adjustment. Since it is of long standing, is in effect generally throughout the Northwest, and is not here sought to be changed, we do not feel warranted in approving its disturbance. That low differential necessarily reflects itself in relatively higher rates from the nearer Indiana groups, as well as relatively lower rates from the more distant Indiana group or groups, than might otherwise be warranted.

In the foregoing discussion we have given no specific consideration to the intrastate rates from Rushville and Victoria, neither of which is grouped with any other origins. The mine at Rushville is located on the Burlington about 40 miles, on the average, southwest of the Fulton-Peoria group. The present rates therefrom to the northern Illinois destinations are generally 5 cents higher than the Fulton-Peoria rates and this relationship is proposed to be continued. Victoria is a short distance north of the Fulton-Peoria group on the Galesburg & Great Eastern Railroad, which connects with the Burlington at a point 10 miles from the Victoria mine. This mine produces annually about one-half million tons of coal, most of which is sold commercially and a substantial portion thereof moves to points in northern Illinois. Its rates are generally the same as those

from Fulton-Peoria and that relation is proposed to be continued. The average distance to the 12 northern Illinois destinations is 149 miles or 40 miles shorter than from the Fulton-Peoria group. Some of the Victoria rates now exceed the Indiana-Illinois scale. Thus, to Byron and Dixon, 134 and 110 miles, respectively, the present rates exceed the scale basis by 4 and 7 cents, respectively. Intrastate rates which to these northern Illinois destinations exceed rates on the basis of the Indiana-Illinois scale are on a higher level than the reasonable interstate adjustment herein approved, and no change in any such intrastate rates is contemplated under our findings in this report.

[fol. 311] Taken as a whole, the combined rates herein approved from Indiana to the 12 northern Illinois destinations average 86.1 percent of the Indiana-Illinois scale and 70.7 percent of the Midland scale and the combined rates herein approved from the Illinois groups to those destinations average 85.4 and 70.3 per cent of those scales. We believe that the rates or rate bases above indicated, which are set forth more specifically in appendices A and D hereto, will afford fair and reasonable relations of rates to northern Illinois destinations, both as between the respective origin groups and as between the Indiana groups on the one hand, and the Illinois groups on the other.

In arriving at the foregoing conclusion we have not overlooked the contention of a cement manufacturing plant at Dixon, which is in competition with other such plants at La Salle, Ill., and nearby points, that the proposed increase from $2 to $2.05 in the rate from southern Illinois to Dixon should be found not justified because no increase is proposed in the present rate of $2 from the same group to La Salle. The latter point, however, is about 40 miles less distant from southern Illinois than Dixon, and the proposed rate to the latter point is 86.1 per cent of the Indiana-Illinois scale as compared, for example, with 88.6 per cent of that scale reflected by the proposed rates to Rockford and Freeport. The average distance from southern Illinois to Dixon is within 1 mile the same as that to Amboy, to which the proposed rate is also $2.05.

We have considered, also, the claim of Middle States Fuels, Inc., and Northern Illinois Coal Trade Association that the Fulton-Peoria rate of $1.50 to Dixon, 124 miles, is even now too high, and that the proposed increase to $1.55 should be found not justified. These interests compare this

proposed rate with several other rates, typical of which is a rate from Fulton-Peoria of $1.33 for 134 miles to Clinton, Iowa. That rate, applying as it does from a base group, is only 83.1 per cent of the Indiana-Illinois scale. The proposed rate to Dixon compares favorably with other proposed rates from the same group for like distances. Thus, the same rate of $1.55 is proposed from Fulton-Peoria to Rochelle, 126 miles, and to Amboy, 140 miles, the latter point south of and intermediate to Dixon over some routes, so that if the Dixon rate were found not justified, the same finding would have to be made as to the proposed rates to a number of other points in the lower tier of these northern Illinois destinations. None of these intrastate rates herein approved is on a higher level than the Indiana-Illinois scale.

To Beloit, the relative situation as a whole differs from that to northern Illinois only in that on coal it is located at the edge of a territory which, because of less favorable transportation conditions, properly takes somewhat higher rates than does northern Illinois and somewhat lower rates than to Wisconsin points farther north or to Iowa, and in that the rates to that point from Illinois groups, from Brazil and Linton mines on the Milwaukee, from Princeton mines on the Southern and the Algers, Winslow & Western, and from Boonville are not here proposed to be changed and therefore are not specifically in issue in this proceeding. In No. 28888, *Middle States Fuels, Inc.* v. *Atchison, T. & S. F. Ry. Co.*, decided concurrently herewith, we have found the rates on coal therein assailed from Fulton-Peoria to Beloit not unlawful, except that the present rate of $1.94 from Atkinson is found unreasonable and required to be reduced to the group rate of $1.80.

[fol. 312] Under the proposed adjustment the average rate from the Brazil district to Beloit would be $2.25 and that from Linton $2.28, or an average spread of only 3 cents. The present differential between those groups is now uniformly 10 cents, which because no change in the rates is proposed would be continued from the mines on the Milwaukee, but from all other mines would become 5 cents. We have hereinbefore found that this differential should continue at 10 cents. As stated, respondents, except the Milwaukee, propose to increase the Brazil rates to Beloit by 17 cents to $2.27, and those from Linton by 12 cents to $2.32. If the rates from all of the mines in each of the

Indiana groups to Beloit were increased to $2.22 from Brazil, $2.32 from Linton, and $2.39 from the combined Princeton-Boonville group, the standard differentials of 10 and 7 cents, respectively, would be continued and, considered as a whole, the resulting rates would compare favorably with the present rates to Beloit from the Illinois groups. A rate of $2.22 from the base Brazil group for 269 miles is 100.9 per cent of the Indiana-Illinois scale and 83.1 per cent of the Midland scale, which may be compared with the present rate of $1.80 to Beloit from the base Fulton-Peoria group for 170 miles, reflecting, respectively, 100 and 89.1 per cent of the scales, and a rate of $2.10 from Springfield, 276 miles, 91.3 and 78.7 per cent of the scales. While the latter rate is on a somewhat lower level than that approved from Brazil, it is the customary 30 cents under southern Illinois to points in southern Wisconsin and the rate of $2.40 from the latter group, 394 miles, which is 91.6 and 74.3 per cent of the respective scales, is on a slightly higher level than the approved rate of $2.39 from the combined Princeton-Boonville group for 387 miles. The latter is 91.2 and 74 percent of the scales. This seeming inconsistency is again brought about by the relatively low 7-cent differential, Princeton over Linton, which to Beloit now applies for a difference in distance of 77 miles and under the basis herein approved will apply for a difference of 85 miles. The approved Linton rate to Beloit of $2.32 for 302 miles is 80 per cent of the Midland scale, as compared with present rates of $2.35 for 322 miles from Du Quoin, 81 per cent of the scale, $2.30 for 358 miles from Belleville, 73.7 per cent of the scale, and $2.30 for 283 miles from Centralia, 82.4 per cent of the scale.

Taken as a whole, the rates herein approved from Indiana to Beloit average 94.3 per cent of the Indiana-Illinois scale and 77.1 per cent of the Midland scale, and the combined present rates from Illinois to that point average 92.9 and 76.6 per cent of the respective scales. We believe that, differences in the levels of the origin differentials considered, the foregoing average rates from the respective Indiana groups to Beloit are reasonable per se and in their relation to each other, and to the rates from the Illinois groups to the same destination.

Rates established on the foregoing bases will result in a uniform spread of 15 cents Beloit over Rockford from all

Indiana and Illinois groups, except Du Quoin. There are 9 origin points in the Du Quoin district, of which 8 are served by the Illinois Central and 1 by the Missouri Pacific. All of these mines take a common rate to Beloit and to the Northwest generally, as well as to Chicago and numerous points in northern Illinois, but to Rockford and a few other points in northern Illinois, for an unexplained reason, the [fol. 313] present and the proposed rates from 2 of the 8 origins on the Illinois Central in the Du Quoin district are 5 or 10 cents less than the rates from the other points in that group, although the average distance from the 2 origins is about the same as the average from the other 6 origins on the Illinois Central. Thus, to Beloit the rate, not proposed to be disturbed, from all Du Quoin mines is $2.35 for 322 miles, but to Rockford the proposed rate from all origins except 2 on the Illinois Central is $2.20 for a short tariff-route distance of 326 miles and from the 2 excepted points is $2.15 for 327 miles. The rate herein approved from all points in the Du Quoin district to Rockford, 304 miles, is $2.15, the same as that from Belleville, 332 miles. This would result in a spread Beloit over Rockford from Du Quoin of 20 cents. The difficulty seems to be with the rate to Beloit, which for 322 miles is 5 cents higher than the rate of $2.30 from the Belleville group for 358 miles, or a higher rate by 5 cents for a shorter distance by 36 miles. We have hereinbefore found that to the northern Illinois destinations the proposed Du Quoin rates have not been justified where and to the extent that they exceed the proposed Belleville rates. The Belleville rate should also be observed as maximum from all Du Quoin mines to Beloit. The resulting spread between Beloit and Rockford will thus be uniformly 15 cents from all origin groups.

In approving the foregoing rate relations we have kept in mind the importance to consumers, coal operators, and railroads of relating these differentially-related coal rates, not strictly upon distance, but so as to afford all concerned a fair opportunity to compete in the purchase, sale, and transportation of coal from Illinois and Indiana mines to these destinations. The rates between the various origin groups in these fields have never been made with primary regard for distance, and to so make them now would have the effect eventually of eliminating practically all competition between most of them, a result which would be highly undesirable to the consumer, whose interests we may not disregard. *Illinois Coal Traffic Bureau* v. *Ahnapee*

& W. Ry. Co., supra, page 240. And in according such weight to distance as seemed to us to be fair and reasonable, we have also kept in mind that the average distances of record, and as used in this report, especially from Illinois mines, frequently reflect seeming inconsistences from the same group to destinations in close proximity to each other. For example, Amboy is located south of and about 12 miles over the Illinois Central and across country less distant from the Illinois groups than Dixon, but the average shortest-tariff route distance from the Springfield group is 9 miles greater and from the southern Illinois group 1 mile greater to the former than to the latter. By use of the short tariff routes the distance to Amboy is 9 miles greater from Springfield and 7 miles greater from southern Illinois than to Dixon. These variations in distance are due to the different routes used and also to the fact that frequently the group rate applies from a larger number of origins to one destination than to another. Thus, to Dixon the Springfield rate is published from 61 origins on 15 originating railroads, but to Amboy the rate applies from only 23 origins on 8 railroads. So also, the southern Illinois rate applies from 75 origins on 7 roads to Dixon and 65 origins on 5 roads to Amboy. The variations in distance thus brought about are much greater from Illinois groups than from Indiana groups. It is plain, therefore, that comparisons based on distance, especially as between Indiana and Illinois groups to particular destinations, can not be accepted as controlling, but must be evaluated with the above facts in mind.

[fol. 314] *Western Kentucky.* — The western Kentucky group is served by the Illinois Central and the Louisville & Nashville. Its rates to this destination territory are uniformly 35 cents over those from southern Illinois. Coal shippers in that group introduced no evidence, but they ask that the proposed rates to the northern Illinois destinations be found not justified to the extent that those from western Kentucky exceed by more than 25 cents the rates proposed from the southern Illinois and Princeton groups. The distances over the shortest tariff routes from western Kentucky are not of record. The average short tariff-route distances to the 12 destinations are 435 miles from western Kentucky, 361 from southern Illinois, and 359 from Princeton, and the respective rates proposed by respondents are $2.49, $2.14, and $2.13, reflecting an average increase from

each group of 9 cents. Western Kentucky's differential is thus 35 cents over southern Illinois for an additional haul of 74 miles and 36 cents over Princeton for an additional haul of 76 miles. In the first 6 months of 1942, the latest period for which the tonnage results are of record, the movement to Beloit and to 7 of the 12 representative northern Illinois destinations was 38,922 tons from western Kentucky, 68,595 tons from Princeton, and 300,153 tons from southern Illinois.

In *Commonwealth of Kentucky* v. *Illinois Central R. Co.*, 253 I. C. C. 779, 259 I. C. C. 259, decided on rehearing December 11, 1944, we found unreasonable the rate of $2.40 from western Kentucky to Chicago and intermediate points to the extent that it exceeded or might exceed $2.30, or 25 cents over southern Illinois. The difference in the actual distances over the short tariff routes from western Kentucky and southern Illinois to Chicago was there found to be 61 miles. Among those intermediate points were a number of the destinations to which the western Kentucky rate in the instant proceeding is proposed to be increased by 5 cents to the Chicago basis of $2.40, or 35 cents over the proposed rate of $2.05 from southern Illinois. Of the 12 representative northern Illinois destinations hereinbefore used, 6 fall in that category of points intermediate to Chicago. To those 6 destinations the average difference in distance western Kentucky over southern Illinois is 73 miles, or only 12 miles greater than the difference to Chicago. To Illinois destinations farther north, the difference in distance is generally greater than to the lower tier of destinations, as it is also to points in Wisconsin and Iowa. Thus, to Burlington and Madison, Wis., the differences are, respectively, 88 and 92 miles and to Clinton and Davenport, Iowa, 79 and 96 miles. In the report on rehearing just referred to we said:

> The conclusion is warranted that the present differential of 35 cents to Chicago and the 50-cent differential proposed by defendants and Illinois-Indiana interests to the entire Northwest[3] are amounts substantially

[3] The term "Northwest," as used in the report on rehearing in that proceeding, includes North Dakota, South Dakota, Minnesota, Nebraska, Iowa, Wisconsin, and that portion of Illinois on and north of a line drawn through Quincy, Springfield, Decatur, and Danville.

greater than justified by the relatively unfavorable transportation conditions from western Kentucky, and that, considering the levels of the rates and differentials generally, these transportation conditions are amply reflected in the differentials of 25 and 35 cents which were prescribed and approved in the prior report to Chicago and the remainder of the Northwest, respectively.

[fol. 315] The evidence bearing upon differences in transportation conditions as between western Kentucky on the one hand, and the Illinois and Indiana groups on the other, to the Northwest, as that term was used in that proceeding, including these northern Illinois destinations, was much more complete there than here. Accordingly, the rates herein proposed by respondents from western Kentucky are found not justified to destinations intermediate to Chicago where they reflect a differential over southern Illinois greater than 25 cents, and are found justified to Illinois destinations farther north where they reflect the present differential over southern Illinois of 35 cents.

The Price Administrator's Contentions.—In behalf of the Price Administrator it was testified that coal dealers would be unable to absorb additional transportation costs at this time, that to avoid losses such dealers would require higher price ceilings on coal, and that ultimately the increased transportation costs herein proposed, if permitted to take effect, would be passed on to the consuming public, thus conflicting with the Government's war-time stabilization program. There was no testimony by coal dealers themselves. The Price Administrator contends that respondents have failed to show that any of their proposed increases are required to enable them to pay maintenance and operating costs and yield a fair return upon the value of their properties. Accordingly, he asks that the proposed increased rates be found not justified.

The important matter here before us is the elimination of gross inequities, discriminations, and unfairness as between (1) the respective levels of the interstate rates from Indiana and western Kentucky on the one hand, and the intrastate rates from Illinois on the other, to these northern Illinois destinations, and (2) the respective levels of those interstate and intrastate rates to northern Illinois on the one hand, and the interstate rates from the same

origins to points in southern Wisconsin and eastern Iowa on the other, all upon a fair and reasonable level. Such an adjustment requires increases as well as some reductions.

In reaching our conclusions herein, we have weighed carefully the contentions of the Price Administrator. We think the importance of establishing a reasonable, nondiscriminatory, and stable adjustment of rates to these northern Illinois destinations outweighs the stabilization considerations raised by him. *I. C. C. v. Jersey City*, 322 I. C. C. 503.

[fol. 316] The Section 13 Issue

Respondents in No. 28881 contend, and they undertook to prove, that the present Illinois intrastate rates to these northern Illinois destinations are unduly prejudicial and preferential, and unjustly discriminatory against interstate commerce, in their relation to the present interstate rates from the same Illinois origins to southern Wisconsin and eastern Iowa, in violation of section 13. As illustrated in appendix B, the present intrastate rates are on a substantially lower level than the present interstate rates from Illinois groups to nearby points in Wisconsin and Iowa, most of which have been approved by us and under all of which there is a substantial movement. Thus, the present intrastate rates to the 12 representative northern Illinois destinations average 87.5 percent of the Indiana-Illinois scale and 72.3 percent of the Midland scale from the Springfield group and 80.7 percent and 65.7 percent, respectively, from the southern Illinois group. But to the 5 representative points in southern Wisconsin (other than Beloit) shown in appendix B, the interstate rates average 108 percent of the Indiana-Illinois scale and 88.6 percent of the Midland scale from the Springfield group, and 103.2 percent and 83.2 percent, respectively, from southern Illinois, and to the 8 representative points in eastern Iowa shown in the same appendix the interstate rates average 102.4 percent of the Indiana-Illinois scale and 88.8 percent of the Midland scale from the Springfield group and 98.8 percent and 80.4 percent, respectively, from the southern Illinois group.

There is of record much testimony bearing upon the operating conditions from representative Illinois origins to northern Illinois and to southern Wisconsin and eastern Iowa. This testimony deals specifically with only 5 of the many railroads involved, and with the operations from one

or several points in particular groups, but we find it sufficiently illustrative to enable us to form an intelligent opinion with respect to the relative transportation conditions from the Illinois groups to the northern Illinois destinations, on the one hand, and to points in southern Wisconsin and eastern Iowa, on the other. For most or all of the haul to the northern Illinois destinations and for the greater part of the distance to eastern Iowa and southern Wisconsin, coal from the Illinois origins to the northern Illinois destinations generally moves in the same trains and is given identical treatment as coal from the same origins to destinations in eastern Iowa and southern Wisconsin. Beyond the northern Illinois points to destinations in eastern Iowa and southern Wisconsin, because of differences in engine ratings and traffic density, the transportation conditions on coal are slightly, but only slightly, less favorable than they are to the points in northern Illinois.

The present intrastate rates from the combined Springfield and southern Illinois groups, which for this purpose we regard as representative of the entire Illinois group adjustment, to the 12 northern Illinois destinations average about 82.6 percent of the Indiana-Illinois scale and 68.1 percent of the Midland scale, as compared with 97.9 percent and 80.3 percent of the respective scales reflected by the representative rates approved by us from those groups to eastern Iowa shown in appendix B, and as compared with 103.1 percent and 83.6 percent of the same scales reflected by the representative rates approved by us and set forth in the same appendix from those groups to southern Wis- [fol. 317] consin. Measured by those scales, therefore, and no better standard of measurements is available, the present intrastate rates, on the average, are on a level approximately 15 percent lower than the interstate rates approved by us to eastern Iowa and about 19 percent lower than the interstate rates approved by us to southern Wisconsin. Such differences between the levels of the intrastate rates here assailed, on the one hand, and the reasonable interstate rates referred to, on the other, are greater than warranted by the differences in the transportation conditions. The intrastate rates herein approved reflect a relation to the reasonable interstate rates from the same origins to southern Wisconsin and eastern Iowa which is at least n[illegible] more favorable to the interstate traffic than is warranted by the

differences in the respective transportation conditions under which the intrastate and the interstate traffic moves.

Undue preference and Prejudice. Witness for respondents submitted a list of industries, some of which manufacture like commodities, located at Rockford and Freeport and at a number of points in eastern Iowa and southern Wisconsin, all of which receive substantial quantities of midwestern coal. The witness was not familiar with the competitive practices of the industries listed and could not say that any of them had been adversely affected by the present relations between the intrastate and the interstate rates. There is no evidence to indicate that any shipper or receiver of interstate coal has suffered injury or that any consumer has shifted from interstate to intrastate coal by reason of the present intrastate rates. Accordingly, the evidence is insufficient to warrant a finding of undue preference or prejudice under section 13 of the act. *Wisconsin R. R. Comm.* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563.

Unjust Discrimination. Taken as a whole, and excluding the rates from Illinois and Indiana groups to Chicago which are affected to an unusual degree by severe competition from the eastern or Appalachian fields, this integrated adjustment of Illinois intrastate and Indiana interstate rates to northern Illinois reflects the lowest level of any important track-delivery coal-rate adjustment in the country, even though transportation conditions in Illinois and Indiana are in general no more favorable than they are in various other sections of the country. *Intrastate Rates on Bituminous Coal within Ohio*, 192 I. C. C. 413, 428; *Coal from Indiana to Illinois*, 200 I. C. C. 609, 617; *Coal Trade Assn. of Indiana* v. *Algers, W. & W. Ry. Co.*, 232 I. C. C. 356, 363; *Ashland Coal & Ice Co., Inc.* v. *Atlantic C. L. R. Co.*, 241 I. C. C. 120, 137; *Fairbanks-Morse & Co.* v. *Alton & S. R., supra*, page 199. To the 12 representative northern Illinois destinations the intrastate rates with which we are here dealing yield from 9.6 mills per ton-mile from the base Fulton-Peoria group for an average distance of 159 miles, which is 89.4 percent of the Indiana-Illinois scale found to be reasonable maximum for this territory, to only 5.8 mills per ton-mile from the southern Illinois group for 354 miles, or 80.7 percent of the Indiana-Illinois scale. From all of the Illinois groups to those destinations they average only 6.6 mills per ton-[fol. 318] mile, for 284 miles. Such earnings, and even the

earnings under the Indiana-Illinois scale employed as a maximum for the rates approved in this report, are much below the average earnings on truck-delivery coal for comparable hauls throughout official territory.

It is a matter of common knowledge, of which we may take official notice, that with few exceptions the principal railroads, such as the Milwaukee, Chicago & Eastern Illinois, Wabash, Chicago, Indianapolis & Louisville, Baltimore & Ohio, and North Western, over which these relatively low rates from Indiana and Illinois groups apply, have been forced to undergo financial reorganization, still incomplete as to several of them, during the last decade because of the lack of sufficient revenues to meet their obligations. While such reorganizations where completed have reduced substantially the funded debt and the interest requirements of the carriers affected, it is important, if recurrence of such financial difficulties is to be avoided, that these rates on coal, which in general can bear its full share of the total transportation burden, be maintained on a level more nearly commensurate with the general level of such rates throughout official territory, of which this area in Indiana and Illinois is a part. The necessary and fair contribution to the revenues of those individual carriers from the coal traffic involved in this proceeding requires that the rates on the intrastate shipments shall not be on a lower level than that reflected by the rates or rate bases herein prescribed.

In 1941 the tonnage of intrastate coal from Illinois origins to the 7 representative destinations of De Kalb, Dixon, Freeport, Geneva, Rochelle, Rockford, and Sterling amounted to 508,322 tons and yielded to respondents a gross revenue of $967,468.50. Respondents are not apprehensive that the rate increases which they propose would divert from them any material quantity of coal. Their claim is that the proposed increases in the intrastate rates to those 7 desinations would augment their earnings by about $53,866.90 per annum, and that there would be a substantial revenue increase also to the other northern Illinois destinations affected.

If the rates as proposed, both interstate and intrastate, were permitted to take effect concurrently, respondents estimate that the additional revenue which would be yielded by the increased rates from Indiana and western Kentucky to the above-named 7 Illinois destinations, based on the 1941 tonnage, would be $50,648.30, or a total annual revenue

increase to those 7 points, dependent upon the increase in the intrastate rates, of $104,515.20. Of course, if no increase were permitted in the rates to Rockford, in order to bring about the 15-cent relation required under the order in *Fairbanks-Morse & Co.* v. *Alton & S. R., supra*, the rates to Beloit would have to be reduced in that amount, which based on the 1941 tonnage would reduce the carriers' annual revenues by $21,142. Should that order be complied with in such a manner, it is likely that the relatively low level of the rates to Beloit which would thus result would have to be given recognition at other points in southern Wisconsin, and this could be expected to bring about a further substantial reduction in the carriers' revenues.

There is some evidence which indicates that rate increases such as those here proposed might be expected to cause some diversion of coal from midwestern mines to mines in the Appalachian fields, and also from the railroads to the motor carriers, especially for the shorter hauls. We do not believe that any such diversion under the rates and rate relations herein approved would be substantial, except that for the shorter hauls from origins in the northern Illinois field, including Alpha, to destinations in northern [fol. 319] Illinois the increases proposed might bring about the diversion of important quantities of coal to the trucks. As will presently appear, the latter rates are exempted from our findings of unlawfulness herein under section 13.

Short-haul Rates. As stated, for the shorter hauls from Illinois origins north of the Fulton-Peoria group to these northern Illinois destinations the mines, which for longer hauls are generally treated by respondents as in the same origin district, are not grouped under a common rate to many of the destinations. For example, to De Kalb the present intrastate rates from mines in the northern Illinois district vary from $1.29 to $1.50 for average distances of from 57 to 116 miles, and to Byron they vary from $1.07 to $1.50 for average distances of from 88 to 119 miles. These rates are generally proposed to be increased by from 5 to 20 cents. There are local conditions, such as truck competition, which are peculiar to most of this short-haul traffic and which vary frequently as between the respective origins and destinations. Because of the relatively light movement under these short-haul intrastate rates, except those from Atkinson and Victoria, the absence of any manifested interest therein by the Indiana or the western Ken-

tucky operators, and the varying conditions which attach to them, with the 2 exceptions noted, we do not regard those rates as important to the section 13 issue here before us. As stated, the intrastate rates from Atkinson are now generally on a higher basis than the Indiana-Illinois scale. Accordingly, all of these intrastate rates from origins north of the Fulton-Peoria group, except Victoria, will be excluded from our findings of unlawfulness under section 13.

We have hereinbefore considered all of the evidence bearing upon the reasonable interstate bases from Indiana and western Kentucky and the fair and reasonable relations between such interstate rates, on the one hand, and the intrastate rates from the Fulton-Peoria and more distant groups or points to the northern Illinois destinations, on the other, and repetition here would serve no useful purpose.

The Jurisdictional Question. In exceptions to the examiner's proposed report the National Association of Railroad and Utilities Commissioners and the Attorney General of the State of Illinois call attention to the wording of section 13(4) of the act and urge that, since the present Illinois intrastate rates here assailed are not shown to be on a lower level than the present interstate rates from Indiana to the same destinations, this Commission has no power to require an increase in the intrastate rates concurrently with the establishment of whatever increased interstate rates may herein be approved from Indiana. Accordingly, they urge that the complaint under section 13 should be dismissed because premature, and that if we should here approve increased rates from Indiana to northern Illinois and the Illinois Commission should, in the proceedings before that body, approve a rate level for intrastate application lower than that approved by us for interstate use from Indiana, the way would then be open for the carriers to petition for the exercise of our corrective power under section 13.

The position of respondents in No. 28881, as clearly set forth in their briefs and oral argument, is that the intrastate rates assailed are unlawful, not as related to the interstate rates from Indiana or western Kentucky, but as related to the interstate rates presently in effect from Illinois origins to destinations in eastern Iowa and southern Wisconsin. The foregoing contentions in behalf of the State authorities, therefore, are based upon a misconcep-

tion of respondents' position and need not be further discussed.

[fol. 320] *Cooperation with Illinois Commission.* As stated, the Illinois Commission has cooperated with us in the hearing and disposition of this proceeding. In the consideration of a tentative final report herein, however, it developed that the Illinois Commission is not disposed to concur in any increase in the Illinois intrastate rates, chiefly, as we understand its position, because of its view that the 15-cent relation which we prescribed between Beloit and Rockford in *Fairbanks-Morse & Co.* v. *Alton & S. R., supra*, is too narrow and should be increased to 25 cents, and the schedules under suspension required to be canceled. The proceeding just referred to has not been reopened and the relation, as such, between the rates to Beloit and Rockford has not been specifically retried here; nevertheless, because of its bearing upon the section 13 issue, we have again carefully reviewed that relation and find upon this record no warrant for any modification therein. We are left with no alternative, therefore, but to approve or require a revision of the interstate and intrastate rates here before us which will result in what we regard, upon this record, as a reasonable and harmonious adjustment from all of these midwestern groups to the northern Illinois destinations, as well as to Beloit. In doing so, we have kept in mind that, taken as a whole from each State, the rates from Indiana and Illinois to these points in northern Illinois, excepting only the relatively low rates of the Milwaukee and the Illinois Central from the Brazil and Linton groups, are now generally on about the same level, and that because of the highly-competitive and interrelated nature of this adjustment it would be impracticable, as well as unjust, to increase either the Indiana rates generally or the Illinois rates without increasing all of them at the same time.

As stated, the entire midwestern adjustment to these northern Illinois destinations has been in a state of uncertainty for many years, chiefly because of the relatively low intrastate rates required to be established and maintained by the Illinois Commission. This adjustment can not be stabilized without an increase in the intrastate rates to those destinations, made concurrently with an increase in the interstate rates from Indiana and western Kentucky, upon bases fair and reasonable to all concerned,

such as is contemplated under the findings made and conclusions reached in this report.

[fol. 321]. Findings of Fact

Based upon the record before us, we make the following major findings of fact:

1. For more than 14 years the rates on coal from Illinois and Indiana mines to the northern Illinois destinations to which the proposed rates would apply have been relatively low in relation to the reasonable interstate rates as approved by us (a) for Illinois-Indiana territory, and (b), differences in transportation conditions considered, from Illinois mines to nearby points in Wisconsin and Iowa. In *Intrastate Rates on Bituminous Coal in Illinois, supra*, we declined to require increases in the relatively low intrastate rates from the southern Illinois group to Rockford, Freeport, and Dixon unless and until the rates on like traffic from the Indiana groups to the same destinations were increased more nearly to the basis of other interstate rates in the same territory. By the proposed rates here under review respondents have attempted to raise these relatively low rates more nearly to the maximum level approved by us as reasonable for this territory and at the same time to comply with our order in *Fairbanks-Morse & Co.* v. *Alton & S. R., supra*, prescribing a maximum spread of 15 cents, Beloit over Rockford, in the rates from Indiana, Illinois, and western Kentucky to those destinations.

2. In general, the proposed interstate rates compare favorably with interstate rates approved by us from Indiana to Illinois and, differences in transportation conditions considered, from Illinois to Iowa and Wisconsin, and do not exceed the maximum of reasonableness. However, they have certain defects which the law will not permit us to sanction.

3. When in 1932 respondents in *Intrastate Rates on Bituminous Coal in Illinois, supra*, failed, for the foregoing reasons, in their endeavor to increase the Illinois intrastate rates to northern Illinois destinations, the Milwaukee shortly thereafter, instead of joining with the other Indiana carriers in an effort to increase the rates from Indiana to those destinations so like action could be taken also with respect to the Illinois rates, reduced its single-line rates from mines served by it in the Brazil and Linton districts in Indiana

to Rockford, Freeport, and other northern Illinois destinations in the same amount as the Illinois intrastate rates to the same destinations had been reduced in 1930 upon order of the Illinois commission. This resulted in a dual basis of rates from the Brazil and Linton districts, that is, lower rates from mines on the Milwaukee than from mines on the other carriers serving those respective districts to the same destinations. Subsequently, the Illinois Central met the lower rates of the Milwaukee from the Linton district by establishing the same basis of rates from Linton mines served by it over its single-line routes to northern Illinois destinations. Respondents now propose to extend the dual basis of rates so it would apply also from the Indiana groups to Beloit.

4. The average distances over the single-line routes of the Milwaukee and of the Illinois Central are approximately the same as, and in some instances less than, those over the [fol. 322] joint-line routes from the same origin districts to the same destinations, and are little different from the average distances thereto from all of the mines in the respective districts. Nevertheless, the present and the proposed rates from mines on the Milwaukee and the Illinois Central are lower than the present and the proposed rates from the mines on the lines of the other respondents serving the Brazil and Linton districts. Both the Milwaukee and the Illinois Central participate in many of the routes over which such higher rates apply to the same destinations to which they maintain and are here proposing their lower single-line rates. Although only 4 of the 30 origins in the Brazil district and only about 9 of the 31 origins in the Linton district are served by the Milwaukee, in a recent representative period, of the total Brazil and Linton tonnage moved to Rockford, a representative destination, 95.4 percent from Brazil and 78.5 percent from Linton moved under the single-line rates of the Milwaukee. There is a movement from Brazil and Linton mines served by respondents other than the Milwaukee and the Illinois Central to these destinations, but it is relatively small. In general, all of the mines in these districts produce coal of the same quality and grade, and a difference of a few cents per ton in the transportation charge is normally sufficient to divert a coal contract from one mine to another.

5. The Milwaukee and the Illinois Central join in rates from the Princeton and Boonville groups to these northern Illinois destinations which reflect differences between those groups on the one hand, and the Brazil and Linton points served by those two respondents on the other, that are substantially greater than the so-called standard differentials and greater than are warranted by the respective differences in distance.

6. From several of the Indiana districts to a number of points in this destination territory, the present and the proposed interstate rates from a few mines in each of such districts are higher than the rates from the great majority of the mines in that district, although the average distances from such excepted mines approximate the average from the district as a whole. In the absence of any justification therefor, the rates from such mines should not exceed those herein approved from the respective districts of which they are a part.

7. Normally, there is severe competition in the marketing of coal in this destination territory between the mine operators in each of the origin groups, and between the respective Indiana, Illinois, and western Kentucky groups, and such competition has been and should continue to be given important consideration in the maintenance of the differentially-related and finely-balanced rate structure on this coal which is required to meet the needs of the consuming public, the mine operators, and the carriers concerned.

[fol. 323] 8. The transportation conditions under which coal moves from Indiana and Illinois groups to these northern Illinois destinations are sufficiently similar to require the use of the same rate basis from all of such groups. To southern Wisconsin and eastern Iowa the transportation conditions are somewhat more onerous and the rates thereto, especially beyond Beloit and Davenport or Clinton, should be on a slightly higher level than to northern Illinois.

9. The coal-rate adjustment from Illinois, Indiana, and western Kentucky groups to these northern Illinois destinations cannot be stabilized upon a reasonable and non-prejudicial basis unless and until the maladjustments and inconsistencies inherent in any multiple basis of rates from the respective origin groups are eliminated.

10. The proposed adjustment would continue the present maladjustments and inconsistencies, and would extend them

also to Beloit and to the Princeton group, thus laying the foundation for a further spread of the dual-rate basis to numerous additional points in Wisconsin.

11. The present interstate rates, except the single-line rates of the Milwaukee and the Illinois Central, from the Indiana groups to northern Illinois destinations are on approximately the same level as comparable rates now maintained from Illinois groups to the same destinations; and the relatively low rates from either the Indiana or the Illinois groups cannot be increased without at the same time increasing the rates from all of these groups.

12. Respondents have been unable to agree upon any reasonable, non-discriminatory, and non-prejudicial adjustment of rates from Indiana and Illinois groups to these destinations; accordingly, the record in these proceedings being adequate for the purpose, it is incumbent upon us to determine, and if need be prescribe, such an adjustment.

13. The difference in the distances from the single important mine in the Boonville group and from nearby mines producing similar coal in the Princeton group to Beloit and the northern Illinois destinations is small. A merger of those two groups will increase the average distance from the Princeton district to the 12 representative northern Illinois destinations as well as to Beloit by only 8 miles. The movement from the Boonville group to this destination territory has been and is negligible, even though its customary differential over Princeton has been only 3 cents. Accordingly, the rates from the Boonville mines to these destinations should not exceed those from the Princeton district to the same destinations.

14. The present and the proposed rates from the western Kentucky group to the northern Illinois destinations and Beloit are made 35 cents over the corresponding rates from the southern Illinois group. In *Commonwealth of Kentucky* v. *Illinois Central R. Co., supra*, we recently prescribed rates from western Kentucky to Chicago and intermediate points, including a number of the northern Illinois destinations embraced in the instant proceeding, which had the [fol. 324] effect of reducing the prior 35-cent differential to those points to 25 cents. The differences in distance, western Kentucky over southern Illinois, to such intermediate points are approximately the same as that to Chicago, but to Illinois points farther north and to points in southern

Wisconsin and eastern Iowa the differences in distance are on the average sufficiently greater to warrant continuance of the present origin differential of 35 cents.

15. In accordance with the findings in *Fairbanks, Morse & Co.* v. *Alton & S. R., supra*, the rates from Indiana, Illinois, and western Kentucky to Beloit should not exceed the resulting rates to Rockford from the same origins by more than 15 cents.

16. The level of the intrastate rates in Illinois herein assailed, on the average, is about 15 percent lower than the interstate rates approved by us as reasonable to representative points in eastern Iowa and about 19 percent lower than the interstate rates approved by us as reasonable to representative points in southern Wisconsin. Such differences between the levels of the intrastate rates on the one hand, and the reasonable interstate rates to southern Wisconsin and eastern Iowa, on the other, are greater than warranted by the differences in the respective transportation conditions under which the intrastate and the interstate traffic moves at the rates referred to.

17. Respondents' loss in revenue as a direct result of the relatively low level of the intrastate rates assailed is not less than $55,000 per annum, and as an indirect result thereof by reason of the relatively low level of the interstate rates from Indiana to the same northern Illinois destinations, which are held down by the intrastate rates referred to, respondents are suffering an additional loss of revenue of not less than $50,000 per annum. Under the rate adjustment herein approved as reasonable and otherwise lawful from Illinois and Indiana to these northern Illinois destinations, respondents' annual revenues may reasonably be expected to be increased by at least the foregoing amounts.

18. The intrastate rates assailed are abnormally low, and traffic moving thereunder fails to produce its fair share of the earnings required to yield revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service, and thereby accomplish the purpose of the act, as set forth in the national transportation policy of the Congress, to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the na-

tional defense. *United States* v. *Louisiana*, 290 U. S. 70; *Florida* v. *United States*, 292 U. S. 1; *Illinois Commerce Comm.* v. *United States*, 292 U. S. 474; *State of North Carolina* v. *United States*, — U. S. — (decided June 11, 1945). The burden thus cast upon interstate commerce is undue in and to the extent that these intrastate rates are less than they would be on the bases herein approved.

19. The approved rates or rate bases outlined in appendices A and D hereto, and elsewhere in this report, will remove the numerous inconsistencies in the present and the proposed rate structures, will bring about a relationship between the rates to northern Illinois on the one hand, and to southern Wisconsin and eastern Iowa on the other, which [fol. 325] will reflect as nearly as may be the differences in the transportation conditions in and to those respective territories, and result in a reasonable, non-discriminatory, and non-prejudicial adjustment both on interstate traffic and as between such traffic on the one hand, and Illinois intrastate traffic on the other.

20. The stabilization considerations urged by the Price Administrator are outweighed by the desirability in the public interest of establishing a fair, reasonable, and stable rate adjustment such as is approved in this report.

Conclusions

Based upon the record and the foregoing major fact findings, we conclude that—

1. The present and the proposed rates from Indiana to the northern Illinois destinations, as published in the tariffs enumerated in appendix E to this report, result or would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee or the Illinois Central railroads, in violation of section 2 of the act, and in undue preference and prejudice as between the origins in the Brazil and Linton districts, and as between the respective Indiana districts, in violation of section 3(1) of the act, in and to the extent that such rates reflect or would reflect rate relations between such districts and between the points in each of those districts to the respective destinations which differ from the relations reflected by the rates and the rate bases set forth as approved in this report, including appendices A and D hereto.

2. The proposed rates from the Brazil, Linton, and Princeton districts in Indiana to Beloit, as published in tariffs

named in appendix E, would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee, in violation of section 2 of the act, and in undue preference and prejudice as between (a) the origins in the respective Brazil and Linton districts (b) the respective Indiana districts, and (c) the Indiana districts on the one hand, and the Illinois districts on the other, in violation of section 3(1) of the act, in and to the extent that such rates would reflect rate relations between such districts and the respective points in each of such districts to Beloit, which differ from the relations reflected by the rates set forth as approved in appendices A and D to this report.

3. The proposed rates from the Indiana districts to the northern Illinois destinations and to Beloit would be unreasonable to the extent that they would exceed the rates or rate bases set forth in the column headed "Rate approved in this proceeding" in appendix A to this report.

4. The present and the proposed rates, as published in tariffs named in appendix E, from the western Kentucky group to northern Illinois destinations intermediate to Chi-[Vol. 326] cago on routes over which the said western Kentucky rates apply or would apply, result and would result in undue prejudice to shippers in the western Kentucky group and in undue preference of shippers in the Illinois and Indiana groups, in violation of section 3(1) of the act, in and to the extent that the western Kentucky rates exceed or might exceed by more than 25 cents the contemporaneous rates from the southern Illinois group to the same destinations.

5. The maintenance of intrastate rates on bituminous coal, in carloads, from Victoria and Rushville, Ill., and from the Fulton-Peoria and Danville groups and other Illinois groups south thereof to northern Illinois destinations to which intrastate rates from the foregoing points or groups are proposed to be increased in schedules enumerated in appendix E hereto, to the extent that such rates are lower than on the approved bases therefor set forth in this report, including appendices A and D hereto, causes and will cause undue, unreasonable, and unjust discrimination against interstate commerce; and this unlawfulness should be removed by increasing the aforesaid intrastate rates to the approved bases for such rates as indicated in this report, including appendices A and D hereto; provided, that this

conclusion shall not be construed as affecting any intrastate rates which are not now lower than on the basis of the Indiana-Illinois scale as set out in appendix C hereto, applied to the shortest tariff-route distances, from Victoria, Rushville, or any of the affected origin groups.

6. Rates in accordance with the foregoing findings and conclusions shall be made effective, so far as practicable, from all origins to all destinations at one and the same time, and will result in a reasonable, non-discriminatory, and non-prejudicial adjustment from Indiana, Illinois, and western Kentucky to all points in the destination territory.

The foregoing findings and conclusions are without prejudice to the right of the authorities of the State of Illinois, or of any other interested party, to apply for a modification thereof as to any specific intrastate rate on the ground that it is not related to interstate rates in such a way as to contravene the provisions of the Interstate Commerce Act.

The suspended schedules of proposed interstate rates will be required to be canceled, without prejudice to the establishment of rates from Indiana and western Kentucky on the bases herein approved. An appropriate order requiring removal of the unlawfulness under sections 2 and 3 of the act found to exist in the interstate rates from Indiana and western Kentucky will be entered. In accordance with our practice in section 13 proceedings, we shall leave to respondents and the Illinois Commission the matter of adjusting the intrastate rates to conform to our findings and conclusions herein under that section. If this is not accomplished within 60 days from the service of this report, consideration will be given to the entry of an appropriate section 13 order.

Commissioner Lee, being necessarily absent, did not participate in the disposition of this proceeding.

I. & S. Docket No. 5139

APPENDIX A

Rates and shortest tariff-route distances from Indiana and Illinois groups to Beloit, Wis., and representative northern Illinois destinations

From groups / To	Amboy, Ill.					Belvidere, Ill.					Byron, Ill.					De Kalb, Ill.				
	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding
	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents
Arthill	246	184	189	185	189	258	197	212	-	207	248	190	200	190	195	213	184	189	175	184
												[2]180	[2]190	190	195		[2]180	[2]185	175	184
												[3]197	[3]207	190	195					
Anton	288	[4]194	[4]199	195	199	297	202	217	-	217	289	195	205	200	205	257	189	194	185	194
		[4]190	[4]195	195	199							[2]190	[2]200	200	205		[2]185	[2]190	185	194
												[3]202	[3]212	200	205					
Princeton	340	201	206	202	206	364	209	224	-	224	366	202	212	207	212	329	196	201	192	201
							[5]214	229	-	224		[6]209	219	210	212					
Rochville	353	204	209	205	206	399	212	227	-	224	413	205	215	-	212	379	199	204	195	201
Canton-Peoria	140	150	155	-	155	243	150	165	-	165	151	164	165	-	165	166	150	155	-	155
Springfield	186	170	175	-	175	279	180	195	-	195	235	180	190	-	190	210	170	175	-	175
Danville	171	180	189	-	180	262	180	195	-	195	210	180	190	-	190	176	180	185	-	180
Centralia	226	190	195	-	195	351	200	215	-	215	262	200	210	-	210	274	190	195	-	195
Belleville	296	190	195	-	195	395	200	215	-	215	359	200	210	-	210	314	190	195	-	195
Du Quoin	266	200	205	-	200	363	205	220	-	215	302	205	215	-	210	294	200	205	-	195
																	[7]190	195	-	195
Southern Illinois	413	200	205	-	205	428	210	225	-	225	363	210	220	-	220	338	200	205	-	205

327

I. & S. Docket No. 5139
Appendix A - Sheet 2.

328

From groups	To Dixon, Ill.					To Forreston, Ill.					To Freeport, Ill.					To Geneva, Ill.				
	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding
	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents
Brazil	257	184	189	185	189	266	190	200	190	195	287	197	212	195	207	217	184	189	175	184
							[2]130	190	190	195		[2]180	195	195	207					
							[3]197	207	190	195										
Linton	301	[4]194	199	195	199	305	195	205	200	205	323	202	217	205	217	249	189	194	185	194
		[4]189	194	195	199		[2,4]190	200	200	205		[2,4]190	205	205	217					
							[3]202	212	200	205										
Princeton	350	[5]201	206	202	206	376	202	212	207	212	339	209	224	212	224	313	196	201	192	201
		[5]214	206	202	206		[9]209	219	207	212		[5]214	229	212	224					
Boonville	361	204	209	205	206	430	205	215	210	212	400	212	227	215	224	356	199	204	195	201
Fulton-Peoria	124	150	155	-	155	160	150	160	-	160	175	150	165	-	165	189	[10]165	170	-	160
																	[10]150	155	-	160
Springfield	177	[11]170	175	-	175	230	180	190	-	190	275	180	195	-	195	230	170	175	-	175
		[11]180	175	-	175												[11]180	175	-	175
Danville	221	[12]180	185	-	185	228	180	190	-	190	227	180	195	-	195	166	180	185	-	180
		[12]184	189	-	185															
Centralia	255	190	195	-	195	261	200	210	-	210	331	200	215	-	215	293	190	195	-	195
Belleville	292	190	195		195	328	200	210	-	210	342	200	215	-	215	353	[13]190	195	-	195
																	[13]204	209	-	195
Du Quoin	278	200	205	-	200	301	[7]205	215	-	210	313	[7]205	220	-	215	318	200	205	-	200
							[7]200	210	-	210		[7]200	215	-	215					
Southern Illinois	312	200	205	-	205	349	210	220	-	220	367	210	225	-	225	382	200	205	-	205

I. & S. Docket No. 5139
Appendix A - Sheet 3.

From groups \ To	Polo, Ill.					Rochelle, Ill					Sterling, Ill.				
	Group distance	Present rate	Proposed rate	Rate approved in I & S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I. & S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.& S. 4368[1]	Rate approved in this proceeding
	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents
Brazil	265	197	207	190	202	255	184	189	180	189	287	184	189	185	189
Linton	306	202	212	200	212	289	194	199	190	199	310	194	199	195	199
		[4]190	200	200	212		[4]189	194	190	199					
Princeton	333	209	219	207	219	352	201	206	197	206	371	201	206	202	206
							[5]214	219	197	206		[5]214	206	202	206
Boonville	378	217	222	210	219	396	204	212	200	206	430	204	209	205	206
Fulton-Peoria	144	164	160	-	160	126	150	155	-	155	122	133	133	-	133
		[7]150	160	-	160							[15]175	172	-	133
												[16]125	130	-	133
Springfield	217	180	190	-	190	200	170	175	-	175	184	170	175	-	175
							[17]180	175	-	175		[17]180	175	-	175
Danville	226	197	207	-	207	206	180	185	-	185	225	180	185	-	185
Centralia	252	200	210	-	210	263	190	195	-	195	262	190	195	-	195
Belleville	320	200	210	-	210	302	190	195	-	195	287	190	195	-	195
												[13]210	215	-	195
Du Quoin	291	205	215	-	210	278	200	205	-	200	292	200	205	-	200
		[7]200	210	-	210										
Southern Illinois	349	210	220	-	220	355	200	205	-	205	329	200	205	-	205

I. & S. Docket No. 5139
Appendix A - Sheet 4

From groups \ To	Rockford, Ill.					Beloit, Wis.				
	Group distance	Present rate	Proposed rate	Rate approved in I. & S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I. & S. 4368[1]	Rate approved in this proceeding
	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents
Brazil	251	197	212	195	207	269	210	227	225	222
		[2]180	195	195	207		[2]210	[2]210	225	222
Linton	300	202	217	205	217	302	[2]220	232	235	232
		[2,4]190	205	205	217		[2]220	[2]220	235	232
Princeton	375	209	224	212	224	379	227	239	242	239
		[5]214	229	212	224		[14]227	[14]227	242	239
Boonville	409	212	227	215	224	415	230	-	245	239
Northern Illinois	-	-		-	-	122	140	-	150	-
Fulton-Peoria	154	150	165	-	165	170	130	-	190	-
Springfield	257	180	195	-	195	276	210	-	225	-
Danville	208	180	195	-	195	223	210	-	225	-
Centralia	316	200	215	-	215	283	230	-	245	-
Belleville	332	200	215	-	215	358	230	-	245	-
Du Quoin	304	205	220	-	215	322	235	-	250	-
		[7]200	215	-	215					
Southern Illinois	363	210	225	-	225	394	240	-	255	-

1 Coal to Illinois and Wisconsin, 232 I.C.C. 151, including the authorized general increases of November 15, 1937.
2 From origins on the Chicago, Milwaukee, St. Paul & Pacific Railroad; no change proposed in rates to Beloit.
3 From origins on the New York Central and Pennsylvania railroads.
4 From origins on the Illinois Central Railroad.
5 From origins on the Baltimore & Ohio Railroad.
6 From origins on the Algers, Winslow & Western, Baltimore & Ohio, and New York Central railroads.
7 From two origins on the Illinois Central Railroad.
8 From origins on the Pennsylvania Railroad.
9 From origins on the Algers, Winslow & Western Railroad.
10 From origins on the Chicago & North Western and Minneapolis & St. Louis railroads.
11 From two origins on the Wabash Railroad.
12 From origins on the Chicago & Eastern Illinois Railroad.
13 From origins on the Illinois Terminal Railroad.
14 From origins on the Southern and Algers, Winslow & Western railroads; no change proposed in rates to Beloit.
15 From origins on the Toledo, Peoria & Western Railroad.
16 From one origin on the Chicago & North Western Railway.
17 From five origins on the Wabash Railroad.

I. & S. Docket No. 5139

APPENDIX B

Comparison between representative present and proposed rates to northern Illinois and Beloit, Wis., and rates to nearby points in Wisconsin and Iowa

From / To	Springfield group			Southern Illinois group			Brazil group			Linton group			Princeton group			Boonville group		
	Short-est tariff-route distance	Rate		Short-est tariff-route distance	Rate		Short-est tariff-route distance	Rate		Short-est tariff-route distance	Rate		Short-est tariff-route distance	Rate		Short-est tariff-route distance	Rate	
		Present	Proposed		Present	Proposed		Present	Proposed		Present	Proposed		Present	Proposed		Present	Proposed
	Miles	Cents	Cents	Miles	Cents	Cents	Miles	Cents	Cents	Miles	Cents	Cents	Miles	Cents	Cents	Miles	Cents	Cents
Dixon, Ill.	177	170	175	312	200	205	257	184	189	301	[3]194	199	350	201	206	361	204	209
Rochelle, Ill.	200	170	175	355	200	205	255	184	189	289	[3]194	199	352	201	206	396	204	209
Rockford, Ill.	257	180	195	363	210	225	251	[4]197	212	300	[5]202	217	375	209	224	409	212	227
Freeport, Ill.	275	180	195	367	210	225	287	[4]197	212	323	[5]202	217	389	209	224	400	212	227
Beloit, Wis.	276	210	-	394	240	-	269	210	227	302	220	232	379	227	239	415	230	-
Chicago, Ill.	228	175	-	328	205	-	183	165	-	230	175	-	283	187	-	324	190	-
Burlington, Wis.	282	260	-	412	290	-	254	255	-	291	265	-	355	272	-	394	275	-
Janesville, Wis.	284	[1]249	-	408	[1]279	-	272	249	-	307	259	-	379	266	-	415	269	-
Fort Atkinson, Wis.	327	[1]253	-	455	[1]283	-	299	253	-	330	263	-	401	270	-	435	273	-
Madison, Wis.	314	260	-	421	290	-	311	260	-	336	270	-	414	277	-	454	280	-
Lake Mills, Wis.	344	[1]263	-	476	[1]293	-	314	263	-	354	273	-	416	280	-	450	283	-
Davenport, Iowa	199	[2]185	-	338	[2]225	-	290	215	-	332	225	-	384	232	-	389	235	-
Clinton, Iowa	213	[2]185	-	354	[2]225	-	312	215	-	332	225	-	407	232	-	424	259	-
Dubuque, Iowa	285	[2]254	-	375	[2]289	-	342	259	-	375	269	-	437	276	-	463	279	-
Mount Pleasant, Iowa	223	[2]194	-	335	[2]229	-												
Tipton, Iowa	239	[2]215	-	373	[2]250	-												
Wheatland, Iowa	246	[2]228	-	375	[2]263	-												
Maquoketa, Iowa	252	[2]241	-	388	[2]276	-												
Washington, Iowa	253	[2]215	-	361	[2]250	-												

[1] Approved in Fairbanks-Morse & Co. v. Alton & S. R., 251 I.C.C, 181.
[2] Approved in Midland Electric Coal Corp. v. Chicago & N. W. Ry. Co., 232 I.C.C. 5, plus 1937 general increases.
[3] From Illinois Central mines, 5 cents lower.
[4] From Chicago, Milwaukee, St. Paul & Pacific mines, 17 cents lower.
[5] From Illinois Central and Chicago, Milwaukee, St. Paul & Pacific mines, 12 cents lower.

APPENDIX C

Distance scales of rates on coal used in this report

(Rates in cents per ton of 2,000 pounds)

Distance	Column 1 rate	Distance	Column 2 rate
Miles	Cents	Miles	Cents
50 miles and over 40	97	50 miles and over 40	104
60 miles and over 50	105	60 miles and over 50	113
70 miles and over 60	113	70 miles and over 60	122
80 miles and over 70	121	80 miles and over 70	131
90 miles and over 80	129	90 miles and over 80	139
100 miles and over 90	137	100 miles and over 90	147
110 miles and over 100	143	110 miles and over 100	154
120 miles and over 110	149	120 miles and over 110	161
130 miles and over 120	155	130 miles and over 120	168
140 miles and over 130	160	140 miles and over 130	175
160 miles and over 140	170	160 miles and over 140	188
180 miles and over 160	180	180 miles and over 160	202
200 miles and over 180	190	200 miles and over 180	215
225 miles and over 200	200	220 miles and over 200	389
250 miles and over 225	210	240 miles and over 220	242
275 miles and over 250	220	260 miles and over 240	255
300 miles and over 275	230	280 miles and over 260	267
		300 miles and over 280	279
325 miles and over 300	238	325 miles and over 300	290
350 miles and over 325	246	350 miles and over 325	301
375 miles and over 350	254	375 miles and over 350	312
400 miles and over 375	262	400 miles and over 375	323
425 miles and over 400	270	425 miles and over 400	334
450 miles and over 425	278	450 miles and over 425	345
475 miles and over 450	286	475 miles and over 450	356
500 miles and over 475	294	500 miles and over 475	367

Column 1. The Indiana-Illinois scale, prescribed in Coal Trade Asso. of Ind. v. Baltimore & O. R. Co., 190 I.C.C. 743; modified so as to absorb the 1937 general increases.

Column 2. The Midland scale, prescribed in Midland Electric Coal Corp. v. Chicago & N. W. Ry. Co., 232 I.C.C. 5, modified so as to absorb the 1937 general increases.

619

APPENDIX D

Average distances and rates, in cents per ton of 2,000 pounds, from Illinois and Indiana groups

From group	Shortest tariff-route distance	Average present rate	Average proposed rate	Average of rates herein approved	Relation of approved rate to rate under - Indiana-Illinois scale	Relation of approved rate to rate under - Midland scale
	Miles	Cents	Cents	Cents	Percent	Percent
To 12 representative destinations in northern Illinois:						
Fulton-Peoria	159	152	159	159	93.5	84.6
Springfield	225	175	183	183	91.5	75.6
Danville	214	183	190	188	94.0	82.1
Centralia	283	195	203	203	88.3	72.8
Belleville	327	195	205	205	83.3	68.1
Du Quoin	300	202	210	206	89.6	73.8
Southern Illinois	354	205	214	214	84.3	68.6
Brazil	256	189	198	195	88.6	76.5
Linton	293	194	203	205	89.1	73.5
Princeton	358	204	213	212	83.5	67.9
Boonville	392	205	215	212	80.9	65.6
Princeton-Boonville	366	204	213	212	83.5	67.9
To Beloit:						
Northern Illinois	122	140	-	140	90.3	83.3
Fulton-Peoria	170	180	-	180	100.0	89.1
Springfield	276	210	-	210	91.3	78.7
Danville	223	210	-	210	105.0	86.8
Centralia	283	230	-	230	100.0	82.4
Belleville	358	230	-	230	90.6	73.7
Du Quoin	322	235	-	235	98.7	81.0
Southern Illinois	394	240	-	240	91.6	74.3
Brazil	269	210	225	222	100.9	83.1
Linton	302	220	228	232	97.5	80.0
Princeton	379	227	235	239	91.2	74.0
Boonville	415	230	230	239	88.5	71.6
Princeton-Boonville	387	228	237	239	91.2	74.0

APPENDIX E

Reference to tariffs containing suspended rates

Railroad	I.C.C. Number	Ill.C.C. Number
The Alton Railroad Company	243	147
The Atchison, Topeka & Santa Fe Railway Company	13094	622
The Baltimore and Ohio Railroad Company	WL-10709 WL-10705	WL-984
Chicago and Eastern Illinois Railway Company (Charles M. Thomson, Trustee)	2	2
Chicago & Illinois Midland Railway Company	B-292	B-221
Chicago and North Western Railway Company	10934 MF-46	867
Chicago, Burlington & Quincy Railroad Company	19670	2064
Chicago, Indianapolis & Louisville Railway Company (L. F. De Ramus and Holman D. Pettibone, Trustees)	4724	-
Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings, and George I. Haight, Trustees)	(B-7246 (B-7238 (B-7287	593 608
The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden and Joseph B. Fleming, Trustees)	C-13020	782
Gulf, Mobile and Ohio Railroad Company	17	3
Illinois Central Railroad Company	E-1802	E-316
Illinois Terminal Railroad Company	69	62
Litchfield and Madison Railway Company	386	296
Louisville and Nashville Railroad Company	A-16428	114
The Minneapolis & St. Louis Railroad Company (L. C. Sprague, Receiver)		303

The Minneapolis & St. Louis Railroad Company (L. C. Sprague, Receiver)		303
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee)	A-9487	397
The New York Central Railroad Company	182-164	22-28
The Pennsylvania Railroad Company	2387	146
Southern Railway Company	C-2230	C-278
Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers)	7276	1081

221

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of July, A. D. 1945

Investigation and Suspension Docket No. 5139

Coal to Beloit, Wis., and Northern Illinois

It appearing, That by order dated July 30, 1942, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order and suspended the operation of all of said schedules until March 2, 1943, and that subsequently respondents have voluntarily postponed the effective date of all of said schedules pending the disposition of this proceeding;

It further appearing, That a full investigation of the matters and things involved has been made; that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and that in said report the Commission has found (1) that the said suspended schedules have not been justified because certain of the proposed rates on bituminous coal from Indiana and western Kentucky rate groups to points in northern Illinois and to Beloit, Wis., would be unreasonable, unjustly discriminatory, or unduly prejudicial or preferential, as indicated in said report; and (2) that certain of the present rates on bituminous coal from Indiana and western Kentucky rate groups to points in northern Illinois are unjustly discriminatory and unduly prejudicial and preferential in and to the extent indicated in said report;

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel the proposed schedules in this docket on or before November 16, 1945, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, without prejudice to the establishment of rates on the bases approved in the said report.

It is further ordered, That the said respondents, according as they participate in the transportation, be, and they are hereby, notified and required, on or before November 16, 1945, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, (1) to cease and desist from practicing the unjust discrimination under section 2 of the Interstate Commerce Act and the undue prejudice and preference under section 3(1) of said act, found in said report to exist, and (2) to publish, maintain, and apply rates and charges which will avoid and remove the said unjust discrimination and undue prejudice and preference

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

(SEAL) W. P. BARTEL,

Secretary.

222

[fol. 337] At the General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 5th day of October, A. D., 1945

Investigation and Suspension Docket No. 5139

Coal to Beloit, Wis., and Northern Illinois

ORDER—October 5, 1945

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petition of respondent Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight Trustees), and petitions of protestants Coal Trade Association of Indiana, and Rockford, Freeport, and Belvidere Chambers of Commerce, in so far as said petitions pray for postponement of effective date of order:

It is ordered, That the order entered herein on July 9, 1945, which by its present terms is to become effective November 16, 1945, upon notice, as therein specified, be and it is hereby, modified so that it will become effective on December 20, 1945, in lieu of November 16, 1945, upon like notice.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 338] At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 13th day of November, A. D., 1945.

Investigation and Suspension Docket No. 5139

Coal to Beloit, Wis., and Northern Illinois

No. 28881

Bituminous Coal Rates Within Illinois

ORDER—November 13, 1945

Upon further consideration of the record in the above-entitled proceedings, and of petition of Coal Trade Association of Indiana for reopening, rehearing, reargument and

reconsideration, and petitions of Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), and Rockford Chamber of Commerce, Freeport Chamber of Commerce and Belvidere Chamber of Commerce, for reopening, rehearing and reconsideration, and of replies thereto;

It is ordered, That the said petitions be, and they are hereby denied.

It is further ordered, That the order entered in Investigation and Suspension Docket No. 5139, on July 9, 1945, to become effective November 16, 1945, upon notice as therein specified, and since modified to become effective December 20, 1945, upon same notice, be, and it is hereby, further modified so that it will become effective January 21, 1946, in lieu of December 20, 1945, upon like notice.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 339] INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 5139

Coal to Beloit, Wis., and Northern Illinois

No. 28881

Bituminous Coal Rates Within Illinois

In the Matter of Letter Request on Behalf of Coal Trade Association of Indiana, for Further Postponement of Effective Date of Order:

Present: Carroll Miller, Commissioner, to whom the above entitled matter has been assigned for action thereon.

ORDER—December 6, 1945

Upon further consideration of the record in the above-entitled proceedings, and of letter request on behalf of the Coal Trade Association of Indiana, protestant, for further postponement of the effective date of the order in Investigation and Suspension Docket No. 5139, and good cause appearing therefor:

It is ordered, That the order entered in Investigation and Suspension Docket No. 5139, on July 9, 1945, to become effec-

tive November 16, 1945, upon notice as therein specified, since modified to become effective January 21, 1946, upon same notice, be and it is hereby, further modified so that it will become effective February 8, 1946, in lieu of January 21, 1946, upon like notice.

It is further ordered, That the order entered in No. 28881, on November 13, 1945, to become effective on January 21, 1946, upon 30 days' notice, be, and it is hereby modified so that it will become effective February 8, 1946, in lieu of January 21, 1946, upon 30 days' notice.

Dated at Washington, D. C. this 6th day of December, 1945.

By the Commission, Commissioner Miller.

W. P. Bartel, Secretary. (Seal.)

[fol. 1] PETITIONER'S EXHIBIT NO. 4

Before The Interstate Commerce Commission

No. 28881

BITUMINOUS COAL RATES WITHIN ILLINOIS

I. & S. No. 5139

COAL TO BELOIT, WISCONSIN AND NORTHERN ILLINOIS

Illinois Commerce Commission, Docket No. 30935

THE ALTON RAILROAD COMPANY, ET AL. In the matter of the proposed changes in rates on bituminous coal between points in the State of Illinois

Illinois Commerce Commission, Docket No. 31295

DIXON CHAMBER OF COMMERCE, MEDUSA PORTLAND CEMENT COMPANY, Reynolds Wire Company,

vs.

CHICAGO AND NORTHWESTERN RAILWAY COMPANY, et al.

Morrison Hotel,
Chicago, Illinois,
March 18, 1943.

Met, pursuant to notice.

Before R. N. Trezise, Examiner, Interstate Commerce [fol. 2] Commission. F. B. McElroy, Illinois Commerce Commission.

PRESENT:

B. M. Hamilton and Erle J. Zoll, Jr., 135 East 11th Place, Chicago, Illinois, appearing for Illinois Central Railroad Company.

Edward A. Kaier, 652 Union Station, Chicago, Illinois, appearing for The Pennsylvania Railroad Company.

T. O. Jennings and J. A. Christiansen, 700 LaSalle Street Station, Chicago, Illinois, appearing for Chicago, Rock Island & Pacific Railway.

Hewitt Biaett, 547 West Jackson Boulevard, Chicago, Illinois, appearing for respondents generally and Chicago, Burlington & Quincy Railroad Company.

C. J. Nelson, 547 West Jackson Boulevard, Chicago, Illinois, appearing for Chicago, Burlington & Quincy Railroad Company.

C. W. Dilli and A. J. Dixon, McPherson Square, 15th and K Streets, North West, Washington, D. C., appearing for Southern Railway Company.

T. N. Cook, 332 South Michigan Avenue, Chicago, Illinois, and

H. H. Washer, 332 South Michigan Avenue, Chicago, Illinois, appearing for C. & E. I. Railroad Company.

B. F. Rice, 1462 Railway Exchange Building, St. Louis, Missouri, appearing for Wabash Railroad.

[fol. 3] C. J. Bindner and L. A. Sackbauer, 1710 Missouri Pacific Building, St. Louis, Missouri, appearing for Missouri Pacific Railroad.

J. E. Flansburg, 400 West Madison Street, Chicago, Illinois, appearing for Chicago and North Western Railway Company (Charles M. Thomson, Trustee).

William L. Hunter and Walter H. Kuhis, Union Station Building, Chicago, Illinois, appearing for Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees).

Leo P. Day, 525 LaSalle Station, Chicago, Illinois, appearing for New York Central System.

W. J. Robertson, 228 Union Station, Chicago, Illinois, appearing for Illinois-Indiana Coal & Coke Committee.

R. C. Raasch, Room 236, 516 West Jackson Boulevard, Chicago, Illinois, appearing for Illinois Freight Association.

George W. Cole, 1000 Midland Building, Cleveland, Ohio, appearing for Medusa Portland Cement Company, Reynolds Wire Company, and Dixon Chamber of Commerce.

C. B. Cardy, 1370 W. 70th Street, Chicago, Illinois, appearing for Medusa Portland Cement Company, Reynolds Wire Company, Northern Illinois Coal Corporation, and Dixon Chamber of Commerce.

R. F. Wood, and H. F. Chalet, 603 Victoria Building, St. Louis, Missouri, appearing for Fifth and Ninth Districts [fol. 4] Coal Traffic Bureau and Belleville Fuels, Inc., 603 Victoria Building, St. Louis, Missouri.

C. P. Hoy, 407 North 8th Street, St. Louis, Missouri, appearing for Fifth and Ninth Districts Coal Traffic Bureau.

Ford D. Porter, 431 South Dearborn Street, Chicago, Illinois, appearing for Sterling Traffic Bureau.

A. S. Boden, 302 Oliver Building, Pittsburgh, Pennsylvania, appearing for Western Pennsylvania Coal Traffic Bureau.

William R. Morgan, Special Assistant Attorney General, and

Stephen Fleming, Assistant Attorney General, 208 South LaSalle Street, Chicago, Illinois, appearing for George F. Barrett, Attorney General of the State of Illinois.

C. W. Bather, Faust Hotel, Rockford, Illinois, appearing for Rockford Chamber of Commerce, Freeport Chamber of Commerce, and Belvidere Chamber of Commerce.

Charles W. Stadell, and Harry A. Roscne, 307 North Michigan Avenue, Chicago, Illinois, appearing for Illinois Coal Traffic Bureau and Central Illinois District Coal Traffic Bureau.

E. B. Wilkinson and J. A. Moran, 231 South La Salle Street, Chicago, Illinois, and

Harold V. Scott, 632 Cherry Street, Terre Haute, Indiana, appearing for Coal Trade Association of Indiana.

A. J. Christiansen, 310 South Michigan Avenue, Room 1708, Chicago, Illinois, and

[fols. 5-6-7] Edward K. Wheeler, 815 15th Street, North West, Washington, D. C., and

Howard W. Vesey, 815 15th Street, North West, Washington, D. C., appearing for Middle States Fuels, Inc., and Northern Illinois Coal Trade Association.

J. E. Marks, 145 East High Street, Lexington, Kentucky, appearing for Kentucky Coal Agency, Incorporated.

Frank L. McCarthy, Security Trust Building, Lexington, Kentucky, appearing for Railroad Commission of Kentucky.

Joseph W. Elliott, 600 South Michigan Avenue, Chicago, Illinois, appearing for Fairbanks, Morse & Company, and Beloit Commercial Club.

William F. Ehmann, 1 West Main Street, Madison, Wisconsin, appearing for Wisconsin Coal Bureau, Inc.

Haskell Donoho, and William H. Edmonds, O. P. A., Washington, D. C., appearing for Director of Economic Stabilization and Price Administrator.

[fol. 8] Proceedings

Exam. Trezise: Come to order, gentlemen. The Interstate Commerce Commission has set for hearing at this time and place Docket No. 28881, Bituminous Coal Rates within

Illinois, and I. & S. 5139, Coal from Beloit, Wisconsin, and Northern Illinois.

Mr. McElroy: The Illinois Commerce Commission has set for hearing at this time and place its Docket 30935, in the matter of proposed changes in rates on bituminous coal, scheduled to become effective on August 2, 1942; and the Illinois Commerce Commission has also set for hearing at this time and place its Docket 31295, Dixon Chamber of Commerce, Medusa Portland Cement Company, Reynolds Wire Company, versus Chicago and North Western Railway Company et al.

Mr. Cardy: Now, Mr. Examiner, in so far as those last two named cases are concerned, I understand they will be tried on one record; in other words, No. 30935, which involves intrastate rates, and 31295, which is a complaint covering the same, substantially the same rates, will be tried on one record.

Mr. McElroy: Those cases will be heard on a common record.

Exam. Trezise: You gentlemen have entered your appearance blanks, I presume. If there are any whose names appear on those blanks who are not present, the Examiners [fol. 9] should be advised at this time.

Mr. Morgan: If the Examiner please, George F. Barrett, Attorney General for the State of Illinois, whose appearance has been entered on the blank by myself as Special Assistant Attorney General, and Stephen Fleming, Assistant Attorney General, will be unable to attend the hearing. However, Mr. Fleming will be at the hearing later.

Exam. Trezise: Is that all, Mr. Morgan?

Mr. Morgan: I believe that clears it up.

Mr. Vesoy: If the Examiner please, my partner, Edward K. Wheeler, is not present at this time. However, he will be here during the course of the hearing. I have entered an appearance for him.

Exam. Trezise: The appearance blanks, I believe, also contain reference to the complaint and answer case in Docket 28888. Inasmuch as the parties have been unable to agree to anything different from what they agreed to on the prehearing conference, the Examiner is constrained to hear the 28888 separately. The number on the appearance blanks 28888 should be stricken and the parties, when we call that number, will be required to enter another appearance.

In No. 28881, which has been announced for hearing, it is an investigation to determine whether the rates and charges of common carriers by railroad on bituminous coal within Illinois from producing points to Rockford, Free- [fols. 10-12] port, Dixon, and other destinations north and west of Chicago, made or imposed by authority of the State of Illinois, cause or will cause any undue or unreasonable advantage, preference or prejudice, as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, and also to determine what rates and charges, if any, or what maximum or minimum, or minimum and maximum rates and charges shall be prescribed thereafter to be charged by railroads within Illinois, to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

The Illinois Commerce Commission and the Governor of Illinois have been advised. In the I. & S. proceeding, 7139, Coal to Beloit, Wisconsin, and Northern Illinois, there is a proposed adjustment in rates on coal in carloads from mines in Illinois, Indiana, and Western Kentucky, to Beloit, Wisconsin, Rockford, Illinois, and certain other points in Northern Illinois. The propriety of those rates are in question.

[fol. 13] Mr. Zoll: Mr. Examiner, as I understand, there are four cases, two Interstate cases and two Illinois Commerce Commission cases. They are all going to be heard on one common record, with the exception of the reparation feature. We will start now and run through and everything that is put in the record during that time will go to each and every one of those four cases. Isn't that all there is to it?

Exam. Trezise: Well, I think that is a pretty fair statement, Mr. Zoll, except there might be some little exception there about this reparation which is going to be deferred until some later date. Now, gentlemen, if there are no preliminary remarks other than have already been made, we will now listen to Mr. Hunter.

Mr. Vesey: I have one inquiry I would like to make, just for the purpose of getting it cleared up, and I am a neophyte in these proceedings, so I hope you will bear with me. As I understood your statement in the beginning, the rates

involved in the 13th Section Case, No. 28881, are rates which [fol. 14] have been either prescribed or imposed by the Illinois Commerce Commission, and the question here is the justness and reasonableness of those rates, as stated by you, and that those are the only rates that are in issue in that proceeding. Am I correct in that understanding?

Exam. Trezise: I am not so sure that the Examiner understands what you have in mind. The issue was the issue that the Examiner read, and you understood it to be the rates imposed by authority of the State of Illinois. That is what the Examiner read. He didn't read anything else about that.

Mr. Vesey: I just wanted to be certain I was correct in that understanding. That is what I thought you said, and as I put it in my own language, that means to me simply the rates in issue, as far as the Interstate Commerce Commission is concerned, are the rates either imposed or prescribed by the Illinois Commerce Commission.

Exam. Trezise: Yes. The Interstate Commerce Commission at this time chose to write the order in conformance to the statute, in the words of the statute. They couldn't do anything else very well and have a sound foundation.

Mr. Hunter: Mr. Examiner, in your statement of the case you indicated that the carriers had given notice to the Illinois Commerce Commission and to the Governor of the State of Illinois, or that the Interstate Commerce Commission had given notice. I wondered if the record might show also that [fols. 15-17] the carriers had given notice as required by law to the Office of Price Administration.

Exam. Trezise: I think that is a very good suggestion, Mr. Hunter, and the record will so show, if that is a fact, and it is, Mr. Hunter?

Mr. Hunter: It is.

Mr. Donoho: On behalf of the Office of Price Administration, that statement is correct.

Exam. Trezise: All right, Mr. Donoho. Now, may we proceed?

[fol. 18] Exam. Trezise: Very well, gentlemen. If there are no further preliminary remarks, may we have the first witness.

Mr. Zoll: Mr. Robertson.

W. J. ROBERTSON was sworn and testified as follows:

Direct examination.

[fol. 19] By Mr. Zoll:

Q. Will you please state your name to the reporter.
A. W. J. Robertson.
Q. Your address?
A. 228 Union Station, Chicago.
Q. What do you do?
A. I am Commerce and Coal Agent of the Illinois Freight Association.
Q. Could you describe briefly the nature of your duties?
A. I prepare coal dockets, conduct rate hearings, and any other assignments having to do with Illinois-Indiana Coal & Coke Committee.
Q. Have you been doing that work very long?
A. Since 1922.
Q. Will you please proceed to identify your exhibits.
A. The representatives of the various railroads parties to these proceedings have under my personal supervision prepared six exhibits for introduction in evidence at this hearing. In accordance with the order of the Interstate Commerce Commission dated December 1, 1942, these exhibits were on March 4, 1943, sent by first class mail to the parties who attended the prehearing conference held before Examiner Trezise on November 24 and 25, 1942. I am prepared to stand cross examination on the correctness of the data shown on these exhibits, but cross examination as to [fol. 20] the reasons why the factual data is what it is as well as with respect to the conclusions that may be drawn from that data should be directed to the individual railroad witnesses who will follow me on the stand.

My Exhibit No. 1 is a map upon which are outlined the coal mining origin groups in Illinois, Indiana, and western Kentucky.

(Respondent's Exhibit No. 1, Witness Robertson, marked for identification, and received in evidence.)

Exam. Trezise: Gentlemen, it will be understood that when the exhibit is identified and described, it will be shown as received in evidence on the record, unless it is later rejected for some good reason.

Mr. McElroy: Miss Reporter, let the record show that the ruling of the Examiner of the Interstate Commerce Commission will also be the ruling of the Illinois Commerce Commission, unless otherwise shown on the record, both with respect to the admission of evidence and the receipt of evidence.

Mr. Morgan: As I understand the ruling of the Examiners, all parties may raise their objections at any time, during the development of cross examination or otherwise.

Exam. Trezise: Yes, Mr. Morgan. There is no objection to your objecting any time, if you have good ground for it.

Mr. Morgan: Well, I am assuming that that is a part of it, and it is received in evidence subject to the development [fol. 21] of objection at any time during the proceeding.

Exam. Trezise: Surely, that is true, Mr. Morgan, for the reason I want to avoid too much talk on the record, so that the reporter merely shows that it is received in evidence, unless it is rejected because of some good reason.

Mr. Morgan: I just wanted to clear up that point.

Exam. Trezise: Yes, sir. Proceed.

The Witness: My Exhibit No. 2 is also a map upon which is outlined the destination territory involved in these proceedings. Within this outline, enclosed in rectangles, are shown the present and suspended rates to twelve representative suspended destinations from the southern Illinois group. The ovals outside the destination territory show fourteen representative comparative points and within each oval is shown the present rate from southern Illinois.

(Respondent's Exhibit No. 2, Witness Robertson, marked and received in evidence.)

Mr. Bather: Just one minute, Mr. Robertson, before you proceed. Do those rates shown in Exhibit 2 reflect the five cent increase permitted in Ex-Parte 148?

The Witness: They do not.

Mr. Bather: So that there would be an additional five cents added to the rates shown in the exhibit?

The Witness: That is correct.

Mr. Zoll: As he will later say.

[fol. 22] The Witness: My testimony will later indicate that.

Mr. Morgan: May I raise one point on Exhibit 2. The witness states that certain areas beyond Illinois were rep-

resentative. I believe that was the exhibit, No. 2, was it not?

The Witness: Comparative, representative comparative points, I stated.

Mr. Morgan: All right. I was wondering if he could explain as he goes along why he feels they are comparative, as I feel that will simplify analysis of the record and cross-examination.

Mr. Zoll: I would rather have it the opposite. I would rather have him get through with this statement, and then any questions about it you can keep in mind and ask. I think that would expedite matters rather than having this constant interrupting.

Exam. Trezise: I think we had better go ahead and let the witness put in his direct testimony, and when it comes to whether or not the point is representative, and he says it is, we can find that out afterwards, Mr. Morgan. I think that would be a more orderly procedure.

Mr. Zoll: Proceed, Mr. Robertson.

The Witness: My Exhibit No. 3, as is shown on its title page, consists of five sections, and the information in each section is also indicated on the title page:

[fol. 23] I do not believe that the first two sections of Exhibit No. 3 require any particular explanation. However, in answer to several inquiries from parties who have received this exhibit, I should like to explain the formula used in Section 3 of this Exhibit No. 3, which is a statement indicating the number of times each origin point was used more than once in computing distances to each representative suspended and comparative destination. This section, as will be noted, consists of four pages. In the first column to the right of the designation of the origin point is a column which is marked "Railroad Symbol," and opposite each origin point is a symbol number. The explanation of the respective symbols used is at the bottom of page 4. For instance, on line 1 from Pekin, Illinois, there is shown railroad symbol 2, which, by referring to page 4, indicates that that represents the Alton Railroad. Under that is symbol 3, which represents the A. T. & S. F. Railway, and symbol 14, which represents the Illinois Central Railroad. Across the page, under the suspended and comparative destinations, where the origin point was used more than once is an "X", which means that that respective

railroad's distance was used in computing the figures shown in these exhibits.

Exam. Trezise: And when you say it is shown more than once, you are saying that there must be a mine there or something of that kind that is served by more than one [fol. 24] carrier, isn't that the point?

The Witness: That is correct.

Section 4 of Exhibit No. 3, consisting of six pages, shows the average distances via short tariff routes from the northern Illinois mining districts to each of the representative suspended and comparative destinations.

Section 5 of the exhibit, consisting of 75 pages, shows the average distances via short tariff routes from origin coal mining groups and stations in Illinois (except northern Illinois), Indiana and western Kentucky to these same representative suspended and comparative destinations.

It will be noted that the mileage information includes average distances for the Group rates as well as separate rates other than Group rates.

(Respondent's Exhibit No. 3, Witness Robertson, marked and received in evidence.)

Exam. Trezise: And when you say short tariff routes, you mean short tariff routes and you do not mean shortest tariff routes?

The Witness: I mean short tariff routes.

Exam. Trezise: Yes, sir.

Mr. Cardy: Just for the benefit of the record, can you tell us the difference between short and shortest? I don't know what it is. Maybe somebody else does.

The Witness: You wouldn't understand if I told you then.

[fol. 25] Mr. Cardy: For the sake of the record, can you figure it out in just a few words, Mr. Robertson?

The Witness: It is merely the difference between using the mine once or a sufficient number of times to cover all railroads that serve that particular point.

Exam. Trezise: And this second proposition that you named is what you call the short tariff route?

The Witness: Yes, sir.

My Exhibit No. 4 consists of 11 sections and the contents of each section are described on the title page. I do not believe the first six sections of this exhibit require any particular explanation.

Section VII of Exhibit No. 4 is a summary, which was prepared for the convenience of the various parties, of the information in Sections III and IV, with respect to the Southern Illinois Group.

Section VIII of Exhibit No. 4 is a statement of the tonnage of bituminous coal and the revenue derived therefrom for the year 1941 and the first six months of 1942, from origins in the Illinois, Indiana, and west Kentucky groups to seven representative suspended destinations in Illinois, and four representative comparative destinations in southern Wisconsin. The first page of Section VIII is a summary of the data given in the remaining four pages.

I should like to explain that the information contained [fol. 26] in Lines 13, 14 and 15 covers data from Illinois Origins to Illinois destinations for the year 1941 and the first six months of 1942.

Sections IX and X of the exhibit require no oral explanation, and will be dealt with by subsequent witnesses.

Section XI of the exhibit is a statement showing revenue loss if rates to representative comparative destinations in Southern Wisconsin were reduced to the same percentage of the H. & H. Scale rates that the present rates from Southern Illinois to Rockford, Illinois, are of the H. & H. Scale rates.

Mr. Bather: Mr. Examiner, before we proceed any further on that, I want to object to any reference in this case whatever to the Holmes & Hallowell Scale. I take the same position as I have in previous cases, that that scale has no application whatsoever in so far as the rates involved in this proceeding are concerned.

Mr. Zoll: Do you want a reply to that?

Mr. Bather: I don't care whether you reply to it or not, but I object to any reference to the Holmes & Hallowell Scale in this proceeding.

Mr. Zoll: Of course, that scale is used throughout the exhibits and the practical effect of your objection would be to call this hearing off and everybody go home.

Exam. Trezise: I don't believe it is necessary to talk [fol. 27] about it. We are going to receive evidence concerning comparative rates, and if the Holmes & Hallowell Scale doesn't prove anything, that is Mr. Robertson's hard luck.

The Witness: This Section will also be dealt with by subsequent witnesses.

(Respondent's Exhibit No. 4, Witness Robertson, marked and received in evidence.)

The Witness: My Exhibit No. 5 consists of four pages and is a revenue statement dealing with situations which would result if the suspended rates become effective versus if rates to the Beloit and other Southern Wisconsin destinations are reduced.

Like Section XI of Exhibit 4, my Exhibit 5 shows what the result of disapproval of the proposed increases might be, but in a somewhat different manner. This particular exhibit will be the subject of discussion by subsequent witnesses.

Exam. Trezise: Now, when you say the proposed increases, what increases are you talking about—the proposed increases in the state as well as interstate?

The Witness: The rates that are under suspension in these proceedings.

Exam. Trezise: Thank you.

(Respondent's Exhibit No. 5, Witness Robertson, marked and received in evidence.)

The Witness: My Exhibit No. 6 is a map showing in [fol. 28] different colors certain principal routes of movement of coal from the southern Illinois origin group to the representative suspended and comparative destinations. This map will be the subject of discussion by following witnesses.

(Respondent's Exhibit No. 6, Witness Robertson, marked and received in evidence.)

The Witness: I might add at this point that throughout my exhibits (excepting the rate history) all rates are shown without the Ex Parte 148 increases. In the rate history, the Ex Parte 148 increases are shown. Since the preparation and distribution of my Exhibits 3 and 4, a Committee of carriers' representatives has reviewed the two exhibits, as well as the exhibits distributed by other parties to this proceeding. Some corrections have been deemed necessary and I have passed around to those here present copies of two exhibits identified as "3-A" and "4-A" naming such changes.

Exhibit 3-A consists of 3 pages and contains corrections to be made in my Exhibit 3.

(Respondent's Exhibit No. 3-A, Witness Robertson, marked and received in evidence.)

The Witness: Exhibit 4-A consists of 4 pages and names corrections to be made in my Exhibit 4.

(Respondent's Exhibit No. 4-A, Witness Robertson, marked and received in evidence.)

The Witness: I have been requested to place into the [fol. 29] record a statement to the effect that all of the revised rates published in Supplement 21 to Gulf, Mobile & Ohio Railroad Company, I. C. C. No. 17 (also designated as Supplement 19 to Ill. C. C. No. 3) and which rates are under suspension in I. & S. Docket 5139 and Ill. C. C. Docket 30935 are all incorrect due to clerical errors.

I have been requested by the G. M. & O. Railroad to indicate the intention of that railroad to publish the same rates as other carriers serving the Belleville group, that is, the rates which are under suspension in these proceedings, and are agreeable to making publication as soon as possible when the suspension proceedings are out of the way.

Attention is directed to the fact that when schedules were filed with the Commissions and which contained rates which were suspended in these proceedings, the Minneapolis & St. Louis Railroad in Supplement 31 to I. C. C. B-1028, which is also Supplement 21 to Ill. C. C. 303, through inadvertence, failed to revise the published Fine Coal rate of 150 cents per net ton from the Fulton County Origin Group to Rockford, Illinois, on the Chicago and North Western Railway to 165 cents per net ton. I have been requested to state for the record that this situation will be corrected at the earliest possible date after these proceedings have been adjudicated.

In connection with suspended rates shown in Section III, attention is directed to the fact that through inadvertence, [fol. 30] the Pennsylvania Railroad failed to increase their present rates to the following destinations:

Page 2, from Brazil-Clinton to Amboy, Illinois; page 6, from Brazil-Clinton to Dixon, Illinois; page 7, from Brazil-Clinton to Forreston, Illinois; page 8, from Brazil-Clinton

and Linton-Sullivan to Freeport, Illinois; page 10, from Brazil-Clinton to Polo, Illinois.

By Mr. Zoll:

Q. Your reference to Section 3 was to Exhibit 4, is that correct?

A. Yes, that is correct, Exhibit 4. I am requested to announce the purpose of the Pennsylvania Railroad to correct these, and any others, situations at the first available opportunity following the adjudication of these proceedings.

That is all I have at this time.

Q. Is it not true, Mr. Robertson, that reference to Docket 28888 on Exhibits 3, 3-A, 4 and 4-A may be stricken?

A. That is correct.

Exam. Trezise: Is that all, Mr. Zoll?

Mr. Zoll: Yes, sir.

Exam. Trezise: Well, before we cross-examine, we are going to have a few minutes recess.

(A short recess was taken.)

Exam. Trezise: Gentlemen, let us proceed. Do you have any more direct questions?

Mr. Zoll: No, sir.

[fol. 31] Exam. Trezise: Do we have any cross-examination?

Mr. Wilkinson: I would like to ask a question or two.

Exam. Trezise: Mr. Wilkinson.

Cross-examination.

By Mr. Wilkinson:

Q. Mr. Robertson, in your Exhibit No. 2, you outlined in circles comparative points outside of the general territory affected; and in the territory affected you show suspended rates. Can you tell me why Beloit, Wisconsin, was not included in the list of destinations to which the rates were suspended?

A. This map shows the rates from southern Illinois, and there was no suspended rate from southern Illinois.

Q. But there are rates from Indiana, and I believe west Kentucky, to Beloit, that were suspended, isn't that right?

A. West Kentucky?

Q. I asked if there were.

A. I don't think so.

Q. Well, were there from Indiana?

A. Yes, from Indiana.

Q. They were suspended from Indiana to Beloit, but not from west Kentucky to Beloit, is that right?

A. Yes; that is correct.

Q. So that, so far as this exhibit is concerned, it deals solely with the situation from southern Illinois?

A. It so states on the face of it, Mr. Wilkinson.

[fol. 32] Q. And in your Exhibit No. 3, I believe it is, you show a list of destinations which are representative destinations, and then you show comparative points, and in the comparative points you show Beloit as a second comparative point.

A. That is correct.

Q. Is that because you understand that is not involved in these proceedings before the Commission at this time?

A. We chose it as a comparative point because it is right around the territory of the northern Illinois area involved in these proceedings.

Q. Well, is it not one of the points involved in these proceedings?

A. That is correct.

Q. And should it not be in the suspended points, so far as the proceedings as a whole are concerned?

A. Well, it was not suspended—the rates were suspended from only one or two Indiana origins, and there would have been no changed situation; there was no purpose in not putting it up there; it could have just as well been put up there.

Q. But in the sense that it is one of the cases that is involved in this proceeding, it is not a comparative point, but one of the very points that is materially in issue in this case?

A. That is correct.

Mr. Wilkinson: That is all.

[fol. 33] By Mr. Zoll:

Q. Right there, page 2 of Section 1 of Exhibit 4, shows that there are suspended rates to Beloit from Brazil and from Linton-Sullivan.

A. That is correct.

Exam. Trezise: And Princeton-Ayrshire, did you leave that out?

Mr. Zoll: The exhibit shows there are no suspended rates from that group.

Exam. Trezise: You mean that 239 was not suspended on the Princeton-Ayrshire to Beloit.

By Mr. Wilkinson:

Q. As a matter of fact, Mr. Robertson, is it not the case that the rates from the New York Central and from the A. W. & W. via the New York Central, and from points on the C. & E. I. and B. & O. to Beloit were suspended?

Exam. Trezise: Where from?

Mr. Wilkinson: From Princeton-Ayrshire via those roads to Beloit.

Exam. Trezise: From Princeton-Ayrshire via roads other than the Milwaukee?

Mr. Wilkinson: To Beloit.

The Witness: Yes, sir, that is correct.

By Mr. Wilkinson:

Q. And also other than the Southern. The Southern Railway did not increase those rates and there are no Southern rates from Princeton-Ayrshire under suspension?

A. That is my understanding.

[fol. 34] Mr. Wilkinson: To Beloit only.

Exam. Trezise: My statement was wrong here. I should have included the Southern.

Mr. Wilkinson: Yes.

By Mr. Wilkinson:

Q. Now, with respect to Boonville group in Indiana, that is served only by the Southern Railway, and those rates from Boonville were not increased and were not suspended?

A. That is my understanding.

Mr. Wilkinson: That is all.

Mr. Cardy: Mr. Wilkinson, you are talking about Beloit?

Mr. Wilkinson: Beloit, yes, sir.

Exam. Trezise: Do we have any further questions?

By Mr. Bather:

Q. Mr. Robertson, in your Exhibit No. 2, how and why did you arrive at the particular points that you call comparative points?

A. We originally in the old 13th Section Case selected, and we attempted to do it here, selected points that surrounded the area involved in the suspension proceedings and took points that looked alike, that might be reasonable consuming points.

Q. Now, take Apple River, for example. Is that comparative with the movement of coal to Rockford or Freeport?

A. Well, that was, I believe Apple River was selected because it was about the only point of any size up in that [fol. 35] northwestern corner of the state there.

Q. Well, I am talking about the volume of the movement to Apple River as compared with the movement in the territory where the rates are now under suspension; is there any comparison in the movement of coal to Apple River, for example, as compared with the points with which you make comparisons in the suspended territory?

A. I would much prefer that you would ask that question or address that question to the witness of the railroad on which Apple River is located. I know nothing about the movement of tonnage to Apple River.

Q. You don't know then why Apple River was selected as a comparative point?

A. That is true.

Exam. Trezise: Who selected Apple River?

The Witness: The carriers' representatives selected it.

By Mr. Bather:

Q. Well, does your testimony in that regard apply to the other points designated comparative points?

A. That is correct.

Q. You don't know why any of these points then were selected for a comparison of the rates in the suspended territory?

A. Excepting to the extent I know they attempted to pick points surrounding the suspended territory.

Mr. Bather: That is all.

Exam. Trezise: You got the information from these various railroads that those were the particular points, and you are merely showing them because of that?

[fol. 36]

A. Yes, sir.

By Exam. Trezise:

Q. You didn't just pick them out of the air yourself?

A. Oh, no.

Q. You relied upon these other railroads' information?

A. I was directed by them to do that, and we gave that list of points, as you will recall, to the parties at the prehearing conference.

Mr. Wilkinson: May I ask one other question?

Exam. Trezise: Mr. Wilkinson.

By Mr. Wilkinson:

Q. Mr. Robertson, in computing your distances in these exhibits which you have identified and introduced, did you not in some instances use distances shown in tariffs which were not in effect at the time you computed them, but some of which became effective March 25?

A. That is correct.

Q. So that your use of distances in this exhibit might vary somewhat from distances figured by other parties using tariffs that were in effect at the time of making up their exhibits?

A. That could be.

Mr. Wilkinson: That is all.

Exam. Trezise: Any further questions?

Mr. Vesey: I have one or two questions, Mr. Examiner.

[fol. 37] Exam Trezise: Mr. Vesey.

By Mr. Vesey:

Q. Mr. Robertson, I ask you to direct your attention to your Exhibit No. 1. Will you tell me first why the locality marked East Galesburg is circled in black ink on that exhibit?

A. This map is one that we have used in many cases, and it is a stock map that we have had for a long, long while, and I believe there was at one time a mine located at East Galesburg, but I don't believe it is now.

Q. Then in so far as this proceeding is concerned, Galesburg has nothing to do with it?

A. That is correct.

Q. One way or the other?

A. That is correct.

Q. Now, I notice on that map that in setting out your origin groups you have Atkinson and Alpha set out separately from Fulton County, is that correct?

A. That is correct, yes, sir.

Q. And on the map that I have, written in in ink, is the little town of Victoria.

A. That is correct.

Q. And that is separately shown and separately treated in your exhibits?

A. Yes, sir.

Q. Why, sir, will you tell me, did you not include Atkinson, [fol. 38] Alpha, Victoria in the Fulton County group?

A. There again, might I ask you to direct that question to the witness of the railroad that serves those origins. There is a very good reason, he will explain it to you.

Q. I am sure there is a very good reason. Who will that witness be?

A. That will be Mr. Nelson.

Q. Then am I to understand, in so far as these exhibits are concerned, that they merely reflect computations made by you with respect to origins and destinations which were given you by the several carriers that made the computations?

A. That is correct.

Q. So that, as for example, on your previous cross-examination here of destinations, when you use the term "representative" you merely use that term—I am using that as an example—just for the purpose of reflecting what someone else said was a representative destination and would be so described in their testimony?

A. That is correct.

Mr. Vesey: I think that is all.

Exam. Trezise: Any further questions?

By Mr. Cardy:

Q. Just one question, on your Exhibit No. 2, Mr. Robertson, there is a light line, dotted line at the top, Illinois Rate Committee Territory Boundary. Will you describe what

that Illinois Rate Committee Territory is, what it means?

[fol. 39] A. That is the territory where the Illinois Freight Association treats the rates applicable to various commodities, including coal.

Q. And the dotted line on the north is the northern boundary of that territory?

A. That is correct.

Q. Now, what is the territory just north of that? What is that territory just north?

A. That is designated usually as Western Trunk Line territory.

Q. Now, in answer to a question asked by Mr. Vesey with reference to the term "representative", that also applies to all these other adjectives you have used, "comparable" and—in other words, all you did was to examine the tariffs under instructions of the carriers, and prepare the tariffs. You offer no evidence with reference to the issue in this proceding?

A. I passed around copies of my testimony and that is very plain in there.

Exam. Trezise: And, Mr. Robertson, on that Exhibit No. 2, you have already corrected the notation on there. In a rectangle to the right it says "Indicate representative points to which rates are under suspension." Now, you explained about that being incorrect with respect to the rates from certain Indiana groups to Beloit?

The Witness: That is correct.

[fol. 40] Exam. Trezise: The other statement that you made was that the rates shown on there did not include increases. I understood you to say, the 148 increases?

The Witness: They do not.

Exam. Trezise: And when you have a note down there that says "Rates from Southern Illinois Group in cents per ton of 2,000 pounds, subject to Ex Parte 148 increase," you mean that it has not been subjected to the increase?

The Witness: That is right.

Exam. Trezise: You mean that it should be added in order to reflect that thing?

The Witness: That is correct, yes, sir.

Exam. Trezise: In other words, repeating it, it does not mean subjected to the increase.

The Witness: No, just subject.

Exam. Trezise: Any further questions?

[fol. 41] By Mr. Stadell:

Q. Referring to your Exhibit No. 3, I believe you stated that contains the detail underlying the various mileages you have computed from the various origins involved to the destinations involved?

[fol. 42] A. That is right.

Q. And those mileages that you show in Exhibit 3 are used as the basis for the comparison shown in your Exhibit No. 4 of the ton mile earnings produced by the present and suspended rates?

A. That is correct.

Q. And those mileages are also used in your Exhibit No. 4 to show the percentages that the various rates from the respective origin groups to the destinations involved are of the Holmes & Hallowell Scale?

A. That is correct.

Q. Now, your Exhibit No. 3-A contains certain numerous corrections which have been made in the mileages in your Exhibit No. 3, is that correct?

A. That is correct.

Q. And your Exhibit No. 4-A contains what—changes in rates or changes in mileages?

A. Corrections that should be made. There are changes in the computations made necessary by the changes in the mileages in Exhibit 3. In other words, when we changed the mileage from LaSalle on the Rock Island, that change should be reflected in the mileage and all the computations connected therewith in Exhibit 4.

Q. Have you made any computations to determine the extent to which the corrections shown in your Exhibits 3-A [fol. 43] and 4-A would change the ton mile earnings or the percentage of the Holmes & Hallowell Scale shown in your Exhibit 4?

A. Yes, they are all included. Each one is included in that 4-A.

Q. Well, you don't show in 4-A the extent to which the changes——

A. I show the applicable change.

Q. But you don't show the extent to which those changes in mileages would change the percentages of the Holmes & Hallowell Scale or the ton mile earnings produced by the present or suspended rates in your Exhibit 4?

A. Where it made a change in the Holmes & Hallowell Scale, that is shown in that exhibit.

Q. Maybe I am not clear on this. I wish you would show me in your Exhibit 4-A where any changes in the percentages of the Holmes & Hallowell Scale shown in Exhibit 4 are contained.

A. Well, here is one, the first page, page 11.

Q. Where is that shown in your Exhibit 4-A?

Mr. Zoll: Do you want this on the record?

Mr. Stadell: What I am driving at is this: He has made a study in his Exhibit No. 4 of the rates and the mileages from these various origin groups to the destinations involved, both the comparative and suspended points; and based upon the mileages shown in his original Exhibit No. 3, he has shown the ton mile earnings that are produced by the rates based on the mileages shown on Exhibit 3, and [fol. 44] also what percent the rates are of the Holmes & Hallowell Scale. Now, the changes shown in Exhibit 4-A would materially change the result shown in Exhibit No. 4 with respect to both ton mile earnings and the percentages that the rates are of the Holmes & Hallowell Scale, and I was wondering if we couldn't have a corrected Exhibit 4 incorporating all those changes.

The Witness: Here, Mr. Stadell, if you will refer to page 11 on line 13, under column F, the present exhibit shows 282; it should be corrected to 276. That is the percentage of your Holmes & Hallowell Scale and your ton mile earnings.

By Mr. Stadell:

Q. We would have to go through Exhibit 4, then, and show all the corrections shown on your Exhibit 4-A?

A. Yes.

Q. Have you recomputed in your Exhibit No. 4, have you recomputed the ton mile earnings and the percentages that the rates are of the Holmes & Hallowell Scale to reflect the changes in mileages shown in your Exhibit 3-A?

A. Yes.

Q. And we could by going through Exhibit 4-A insert each of those in your Exhibit 4, and that would be your corrected exhibit?

A. Yes, sir.

Mr. Stadiell: All right. Thank you very much.

Exam. Trezise: And for fear that somebody might not know, the Holmes & Hallowell Scale that you are talking [fol. 45] about here is the maximum Holmes & Hallowell Scale as prescribed, increased according to the general increases thereafter.

The Witness: That is correct.

Mr. Vesey: Except Ex Parte 148.

Mr. Zoll: Is that correct, Mr. Robertson?

Exam. Trezise: He says, except Ex Parte 148.

The Witness: My testimony is 148 increases are not included in anything but the rate history.

Mr. Vesey: In making your comparisons with the H. & H. Scale, you have taken the H. & H. Scale without the Ex Parte 148 increase on that scale?

The Witness: That is correct.

By Mr. Wilkinson:

Q. Is it your understanding, Mr. Robertson, that coal originating on the Pennsylvania Railroad at Terre Haute is not delivered to the Milwaukee at Terre Haute, but is hauled to Chicago by the Pennsylvania?

A. I don't know how their operating conditions are down there.

Q. Is it not a fact that under the tariffs, the Pennsylvania delivers to the Milwaukee at Terre Haute, that that is an available routine for the movement of coal originating at that point?

A. For the Pennsylvania to haul it to Chicago?

Q. No. Is it not your understanding that there is an available route from the Pennsylvania at Terre Haute via the Pennsylvania and Milwaukee—the Pennsylvania deliv- [fol. 46] ering to the Milwaukee at Terre Haute?

A. I think that the tariff is restricted so that that route does not apply from that one mine at West Terre Haute.

Q. Will you check that again? Can you check that again during the noon hour?

A. I will be glad to during the noon hour.

Mr. Wilkinson: Thank you.

Exam. Trezise: Do we have any further questions?

Mr. Morgan: Just one or two questions here I would like to ask this witness.

By Mr. Morgan:

Q. On Exhibit No. 2, if you please, referring to the points in Wisconsin which I understand you used as comparative points, are you informed with respect to the rates charged by the Wisconsin Commission or public authorities for transporting coal?

A. Not in this proceeding, I am not. I am acquainted with it, but not enough to talk about it in these proceedings, to these particular points. From what origin do you have in mind?

Q. Well, for example, do you know what proportion of the coal transported to these points in Wisconsin is coal which has been shipped across the lake, for example, by boat and picked up at Milwaukee?

A. No, I do not.

Q. Or other dock points on Lake Michigan?

[fols. 47-50] A. No, I am not acquainted.

Q. Have you considered whether that factor would or would not be material in arriving at the question as to whether the rates to the points you mentioned in Wisconsin, as shown on Exhibit 2, would be material in determining whether those rates were just and reasonable and also whether it would eliminate those points from what would be considered comparative points?

A. No, sir.

Q. Now, will you refer to Exhibit 5. I have just one or two questions. That is an exhibit or study, whichever you term it, as I understand, based entirely on the traffic for the year 1941, is that correct?

A. It says so on the title page, yes, sir.

Q. Well, I am just assuming that is correct.

A. Yes, sir.

Q. Did you make a study to determine what portion of that traffic might be less than carload lots?

A. No, sir. You mean the proportion of coal moving in less than carload lots?

Q. Yes.

A. The answer is, no.

Q. You have made no study of that?

A. No, sir.

[fol. 51] Exam. Trezise: Very well. Mr. Robertson, you indicated that you had no knowledge of the movement of coal from the Wisconsin docks to these destinations, and when you say "these" I think you had in mind Beloit particularly. Did you participate in the Fairbanks Morse case, out of which these proceedings seem to have had their origin, or at least they were encouraged by that case, which is 251 I. C. C. 181?

The Witness: No, sir.

Exam. Trezise: Then you are not familiar with the figure that was shown in appendix B, by the individual railroads, as to the movement of tonnage from those ports to Beloit?

The Witness: Only to the extent that I have read it. I am not familiar with the movement at all.

Mr. Zoll: I would like to ask a question or two about one point.

Exam. Trezise: All right, Mr. Zoll.

Redirect examination.

By Mr. Zoll:

Q. You said in your testimony, Mr. Robertson, that these exhibits were prepared by a committee of carriers, is that right?

A. Carriers' representatives.

Q. And that they were prepared by this committee under your personal supervision?

[fol. 52] A. That is correct.

Q. And you worked with the committee, is that correct?

A. Yes, sir.

Q. And you, working with the committee, and the committee decided that these points would be used in the carrier's exhibits as representative suspended and comparative points?

A. That is right.

Q. In your opinion and in the opinion of the committee they were representative?

A. Yes, sir.

Mr. Zoll: That is all.

Mr. Vesey: If the Examiner please——

Mr. Blaett: I wanted to wind that up with one further question.

Exam. Trezise: All right.

By Mr. Biaett:

Q. Did that committee which selected the suspended representative and comparative points include the coal traffic managers of the respondent railroads?

A. That is right.

Exam. Trezise: All right, Mr. Vesey.

Recross-examination.

By Mr. Vesey:

Q. Am I to take it from your last answer to Mr. Zoll, that your opinion as to whether or not these destinations in the compared territory—that your opinion was used in connection with the opinions of the others, as to whether [fol. 53] or not these destinations were representative destinations?

A. Yes, sure.

Q. So you have an opinion as to whether or not these destinations then are representative, is that right?

A. To the extent that they surround the suspended area.

Q. When did you determine that you did have an opinion as to their representative character? Since my last cross examination of you?

A. No. Since this thing started, we had this committee working and selecting these points, and we did the work.

Q. Well then, let us go back to the analogy that was first given to you on cross examination with respect to Apple River. What is your opinion as to the representative character of that destination and what destination in Illinois is it typical and representative of?

Mr. Zoll: I object to the form of that question. Let the question be, why do you think it is representative. Would that suit you?

Mr. Vesey: I will be glad to ask the question in that way. Surely, that will be all right.

Mr. Zoll: In other words, why did you use Apple River?

The Witness: Because it was a point in the northern, northwestern portion of the State of Illinois.

Exam. Trezise: By what did you measure a representa- [fol. 54] tive point—because it was a town of some size, because it received coal, or because it was located in some area?

The Witness: Just located in that portion of the state.

Exam. Trezise: You didn't take every little jerkwater town?

The Witness: No. We tried to, we selected certain representative points, as we call them. There is a stretch of territory up in that part of the state, and we thought we should have a point in that territory. So we selected Apple River.

Exam. Trezise: It was a town of some size and a little bit larger than the other towns around there and you selected it because it was up in that territory. Was that your measure?

The Witness: No, that wasn't mine. That might have been the reason the representative of the railroad on which Apple River is located had in mind, but I didn't have that in mind when I did my work.

By Mr. Vesey:

Q. What did you have in mind when you suggested these destinations were representative?

A. I didn't suggest them.

Q. You didn't suggest it. You just agreed to somebody else's suggestion?

A. We had a committee of the carriers' representatives, and the representative of the carrier on which Apple River [fol. 55] is located was there and we needed a point up in that territory, so we selected Apple River.

Q. Did you know at the time you made your concurrence in the determination of these representative destinations that there was coal moving to that destination?

A. No.

Q. You did not know that?

A. No, sir.

Q. That was immaterial then in your determination?

A. In mine?

Q. In yours.

A. Yes, sir,—not immaterial, but I didn't know. You asked me if I knew any coal moved there. I do not know.

Q. Did you make an investigation prior to that concurrence to determine if there was coal, from what origin group it arose?

A. No, sir.

Q. In other words, it just looked like a good place on the map to put a point, is that right?

A. Well, that is kind of a crude way of putting it.

Q. The net effect is the same, isn't it?

A. You are right there.

Q. I say, the net effect is the same?

A. Sure.

Mr. Vesey: Thank you.

[fol. 56] Exam. Trezise: Mr. Robertson, you don't mean to create the impression in the mind of the Commission that you don't know anything about these towns and you are a perfect stranger out here and you don't know anything about rates, tariffs, and movements of coal?

The Witness: I have a slight knowledge.

Exam. Trezise: You do have qualifications, or do you?

The Witness: I have slight qualifications, yes, sir.

Exam. Trezise: That is the answer to my question. All right, gentlemen.

Mr. Bather: May I ask a question, please?

Exam. Trezise: All right, Mr. Bather.

By Mr. Bather:

Q. Mr. Robertson, in your Exhibit No. 5, showing tonnage and revenue figures, why did you select the year 1941 as against the comparisons in your other exhibits where you used the year 1941 and the first six months of 1942?

A. This is a yearly statement. It is a statement for a year. I don't think the figures were available at the time this exhibit was made up for the year 1942.

Q. As I understand it, at the conference on November 24, it was understood that the tonnage and revenue figures would be predicated upon the movement from July 1st, 1941, to July 1st, 1942, and that is the purpose of my question.

A. No, that was not the agreement at the prehearing con-[fol. 57] ference.

Q. That was my understanding.

A. You would have to read the order. The order states that certain of the carriers were making tonnage statements for the period you mentioned and some were using a year and some were using a year and six months. That is included right in the order.

Q. But you did compute your tonnage figures in your Exhibit No. 3, I think it is, for the full year of 1941 and six months of 1942?

A. That is right.

Q. So that, that might reflect a different conclusion as to the tonnage and revenue for the period from July 1st, 1941, to July 1st, 1942?

A. Oh, it would, of course.

Mr. Bather: That is all.

By Mr. Stadell:

Q. I have just one question. Going back to Apple River for a moment, that is in Illinois, isn't it?

A. Yes, sir.

Q. Has the Interstate Commerce Commission prescribed any of the present rates from the Illinois mines to Apple River?

A. Has the Interstate Commerce Commission?

Q. Yes.

A. You mean in 23130?

Q. Yes, or in any other case?

[fol. 58] A. I don't recall.

Q. Are the rates from the Illinois mines to Apple River held at their present level by any order of the Illinois Commerce Commission?

Exam. Trezise: You mean either maximum or minimum?

Mr. Stadell: Yes, either maximum or minimum, or both.

The Witness: Well, Apple River, as I understand it, is intermediate to Dubuque, up there around Galena. I don't recall at the moment.

Mr. Stadell: Well, will you verify that?

The Witness: I will verify that.

Exam. Trezise: All right, gentlemen, if there are no further questions, we will adjourn until 2 o'clock, and when we resume this afternoon, I would like you gentlemen to give some consideration in the meantime to how we are progressing with the case and the probable time it will take to put in the evidence. We stand adjourned.

(Witness excused.)

(At 12:30 o'clock P. M. recess taken to 2 o'clock P. M.)

Afternoon Session

The hearing was resumed pursuant to recess. 2 o'clock P. M.

Exam. Trezise: All right, gentlemen, when you are ready, we will continue.

W. H. Robertson resumed.

[fol. 59] Examination.

By Mr. Zoll:

Q. Mr. Robertson, you were asked two questions by counsel. You are prepared now to answer those questions, I believe.

A. Yes, sir.

Q. Proceed.

A. In answer to Mr. Stadell's question——

Mr. Morgan: What questions were they, counsel?

Mr. Zoll: He will tell you and then answer them.

Mr. Morgan: Well, I think the question should go in the record, so we will know whether his recollections are correct or not.

The Witness: In answer to Mr. Stadell's question as to whether the rates to Apple River had been prescribed by the Illinois Commission, as far as I know, they have not.

By Mr. Stadell:

Q. What was your answer to the question that I asked you with respect to whether the Interstate Commerce Commission has prescribed the present rates from any of the Illinois groups to Apple River?

A. As far as I know, they did not.

By Mr. Zoll:

Q. Didn't Mr. Wilkinson ask you a question too, or am I wrong about it? Didn't he ask you about the Pennsylvania movement at Terre Haute?

A. In answer to Mr. Wilkinson's question with respect to [fol. 60] whether the tariff provided for a route from Terre Haute in connection with the Pennsylvania and Milwaukee Railroad, the tariff has such a route in it.

By Mr. Wilkinson:

Q. That would reduce the distance that you show from that one point, would it not?

A. If it were used, yes.

By Mr. Stadell:

Q. Do you know whether any of the coal from the mines involved moves over that route?

A. No, sir, I believe not.

Mr. Stadell: That is all.

Mr. Zoll: That is all.

Exam. Trezise: If there are no further questions, you may be excused, Mr. Robertson, subject to being recalled in case any witnesses that follow you cannot answer the questions concerning which you testified.

The Witness: Thank you, sir.

(Witness excused.)

Mr. Zoll: I call Mr. Hamilton. Mr. Hamilton will introduce no exhibits, but he has a prepared statement which he will read and which has been distributed.

B. M. Hamilton was sworn and testified as follows:

Direct examination.

By Mr. Zoll:

Q. Please give your full name to the reporter.

A. B. M. Hamilton, Assistant General Freight Agent, [fol. 61] Illinois Central Railroad, 135 East 11th Place, Chicago.

Q. Would you please describe generally the nature of your duties?

A. My work is in connection with the rate adjustments on coal and coke.

Q. Have you been connected with that work for any length of time?

A. Yes, I have been either in the general freight office or in the office of the coal traffic manager for the past 28 years.

Q. Please explain the immediate occasion for the publication of the rates herein suspended and for the filing of the thirteenth section petition in Docket 28881.

A. The rates on coal suspended in these proceedings are the result of compliance with the order of the Interstate Commerce Commission in Docket 25419, 251 I. C. C. 181, in which the rates from Illinois, Indiana, and west Kentucky to Beloit, Wisconsin, were found not unreasonable but unduly prejudicial to Beloit and unduly preferential of Rockford, Illinois, to the extent that the rates to Beloit exceed

by more than 15 cents per ton the contemporaneous rates to Rockford. The difference in the rates to Rockford and Beloit being 30 cents, the carriers had the option of reducing the rates to Beloit 15 cents, or of increasing the rates to Rockford 15 cents.

Considering the fact that the rates to Rockford and re-
[fol. 62] lated northern Illinois points are on a lower level than the rates to the surrounding territory, a fact which was recognized by the Interstate Commerce Commission in the former 13th Section case, I. C. C. Docket 25130, 182 I. C. C. 537, at page 564, and in view of the fact that the Interstate Commission in Docket 25419 found the present rates to Beloit not unreasonable but said that they were relatively low, 231 I. C. C. 181, at page 199, the carriers, rather than make a further reduction to Beloit, complied with this Section 3 order by increasing the rates to Rockford, Illinois, 15 cents per ton, grading the rates back at intermediate points.

Exam. Trezise: By proposing to increase, is that right?

The Witness: Yes, by proposing to increase.

The Illinois Commerce Commission under Docket Ill. C. C. 30035, suspended the intrastate rates proposed in the adjustment. That suspension created, as I shall later show, undue, unreasonable, and unjust discrimination against interstate commerce, and undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand.

Thereupon, because of the suspension of the state rates and the impracticability of increasing interstate rates without a similar increase in the state rates, the carriers filed a 13th section petition with the Interstate Commerce Com-
[fol. 63] mission and advised that Commission that they had no objection to the suspension of the interstate rates.

The interstate rates were then suspended under I. & S. Docket 5139, and the Interstate Commerce Commission in Docket 28881 did institute an investigation under section 13 into the Illinois intrastate rates which the carriers were required to maintain in effect because of the suspension by the Illinois Commission.

By Mr. Zoll:

Q. With the rates from what origin groups are you going to deal in your testimony?

A. In my discussion regarding the rates shown in Mr. Robertson's exhibits my remarks will be directed to the rates from the base group, southern Illinois, and related groups, DuQuoin, Belleville, Centralia, Springfield, and west Kentucky. Other witnesses to follow will discuss the rates from the southern Illinois, Centralia, Springfield groups, other Illinois groups, and Indiana groups. Any reference made to present or proposed rates will refer to the basic rates and they are subject to the 5 cents per ton increase under Ex Parte 148 and Ill. C. C. 30546.

Q. By which you mean that those increases are not within the rates you mentioned?

A. They have not been included in the rates that are shown and to which I will refer.

Q. Now that you have stated the immediate reason for [fol. 64] these proceedings, I wish you would go back and explain briefly the background of the rates to northern Illinois and southern Wisconsin to the extent that that bears on the issues in these cases.

A. The Illinois Commerce Commission, by its order of March 7, 1928, in Chamber of Commerce of Freeport v. B. & O. R. R. et al, Docket No. 13558, and Rockford Manufacturers and Shippers Association v. B. & O. R. R. et al, Docket No. 13569, required the reduction of the rates on coal from the Danville, northern Illinois, Fulton County, Peoria, Springfield, Centralia, Belleville, DuQuoin and southern Illinois groups to Rockford and Freeport. The Commission said that inasmuch as the complainants received the greater part of their coal from the southern Illinois group, it would deal with the rates from the southern Illinois group to Rockford and Freeport and would not attempt to change the differentials between the various origin groups. It reduced the rates from the southern Illinois group to Rockford and Freeport from $2.17, to $2.00 and continued in effect the differentials that existed between the rates from the southern Illinois and the other Illinois groups, except the northern Illinois group. The effect of the orders in these two cases was to reduce the rates from all the Illinois groups to Rockford and Freeport by 17 cents per ton, except from northern Illinois, which the Commis-

sion required to be reduced from $1.47 to $1.00 per ton, [fol. 65] a reduction of 47 cents. This reduction to $1.00 of the rate from northern Illinois to Rockford and Freeport compelled the carriers to reduce the rates from northern Illinois to Dixon to $1.00 also, in order to avoid departures from the long-and-short-haul provision of the Illinois Public Utilities Act.

The Illinois Commerce Commission, by its order of May 6, 1930, in Sandusky Cement Co. v. I.C.R.R. et al, Docket No. 14009, required the reduction of the rates on coal from the Springfield and southern Illinois groups to Dixon, the rate from southern Illinois to Dixon being ordered reduced from $2.04 to $1.90, and the rate from the Springfield group to Dixon being ordered reduced from $1.74 to $1.60, a reduction of 14 cents per ton in both rates.

The complaint in that case involved only the rates from the southern Illinois and Springfield groups, but in order to avoid departures from the long-and-short-haul provision of the Illinois Public Utilities Act, it was necessary to reduce also the rates from the DuQuoin, Belleville, and Centralia groups from $1.94 to $1.90 so that the rates from those groups would not exceed the rates from the more distant group, southern Illinois.

The rates prescribed in the Rockford-Freeport Cases were published effective August 20, 1930, and in the Dixon Case effective July 1, 1930.

[fol. 66] Thereafter, upon petition of the principal railroads operating within the State of Illinois, alleging a violation of Section 13 of the Interstate Commerce Act, the Interstate Commerce Commission entered upon an investigation in Docket 23130 concerning the lawfulness of all rates and charges for the intrastate transportation of bituminous coal in carloads from mines in Illinois to destinations in Illinois. That Commission, after extensive hearings and after careful consideration, issued its report in that proceeding, decided March 8, 1932, and reported in 182 I.C.C. 537.

The Commission considered, among others, the rates to Rockford, Freeport, and Dixon which as I have explained had been prescribed by the Illinois Commission, and in their report stated that the rates to these destinations were "well below the reasonable level of rates in this territory," but that since that appeared to be true also of most of the rates from the Indiana groups to those same points, there

was not sufficient justification for requiring any of the intrastate rates to Rockford, Freeport, or Dixon to be increased "until and unless the interstate rates from Indiana groups to the same destinations are increased to a level more nearly commensurate with the general level of the rates on coal in this territory." (182 I.C.C. 537, at page 564.)

The present intrastate rates to Rockford, Freeport and Dixon are the same as those prescribed in those three cases [fols. 67-71] by the Illinois Commission, except that they have been since generally increased 10 cents per ton following Ex Parte 115, reopened, in Ill. C.C. 23208.

Q. Please state the position of the carriers with respect to the rates involved in these cases.

A. As I have explained, the carriers have now proposed increases in the interstate rates from mines in Indiana to this northern Illinois territory centering around Rockford, Freeport and Dixon. Such increases bring those rates up to a level more nearly commensurate with the general level of the rates on coal in this territory, and such increased rates as well as other interstate rates in this territory, are reasonable interstate rates.

Q. It is understood, of course, that those are the ones that are suspended, is that right?

A. Yes. The carriers have also proposed increases in the intrastate rates to this same territory. They are of the opinion that such proposed increased rates are reasonable and otherwise lawful under the Illinois law, and that the Illinois Commission, by suspending those rates and thus requiring the carriers to maintain in effect intrastate rates on coal lower than the reasonable existing interstate rates in this territory and lower than the reasonable suspended interstate rates from the Indiana group, is causing violations of section 13 of the Interstate Commerce Act.

[fol. 72] Q. Would you please look at Mr. Robertson's Exhibit No. 4. You will note that Section 1 of that exhibit sets forth a chronological history of the rates to Beloit, Chicago, Dixon, Freeport and Rockford. I wish you would select one of these destinations and explain for us briefly [fol. 73] what the principal changes in the rates have been and why they are made.

A. I will take the rates to Rockford, on pages 8 and 9 of Section 1 of Exhibit No. 4. Effective December 1, 1910, the rates to Rockford from both Illinois and Indiana Groups

were increased 10 cents per ton. However, the Illinois Railroad & Warehouse Commission, by its order of November 28, 1910, held that that increase should not have exceeded 7 cents per ton, and the rates were accordingly revised, effective December 10, 1910, to reflect a 7-cent increase over the rates in effect prior to December 1, 1910. Effective December 1, 1916, all rates were increased 5 cents per ton on interstate traffic only, and effective April 15, 1917, the Illinois Commerce Commission allowed the rates on Illinois intrastate traffic to be increased by 5 per cent with a maximum of 5 cents per ton.

Effective July 1, 1917, the interstate rates were increased 15 cents under Ex Parte 57, and on October 16, 1917, the intrastate rates were increased by the same amount. The increases of June 25, 1918, were made under authority of General Order No. 28, and on October 5, 1918, slight readjustments were made due to disposition of fractions in publishing the rates under that order.

Effective September 1, 1919, rates were originally established from the west Kentucky group with a differential of 25 cents over southern Illinois, under authority of the Inter- [fol. 74] state Commerce Commission's order in Docket 9517, 53 I.C.C. 148.

Effective August 26, 1920, under Ex Parte 74, the interstate rates from Illinois and Indiana were increased 40 per cent. The rates from western Kentucky were increased 33⅓ per cent and the Illinois intrastate rates were also increased 33⅓ per cent, since that was the maximum allowed by the Illinois Commerce Commission. As a result of this situation, the carriers filed a 13th Section petition with the Interstate Commerce Commission, and that Commission, after investigation, issued an order in Docket No. 11703, 60 I.C.C. 92, requiring the Illinois intrastate rates to be increased 40 per cent over the rates in effect prior to August 26, 1920. Such increased intrastate rates became effective February 19, 1921.

On July 1, 1922, all rates were reduced 10 per cent pursuant to the order of the Interstate Commerce Commission in Reduced Rates, 1922, 68 I.C.C. 676. Effective July 19, 1925, changes were made in the interstate rates to comply with the opinion and findings of the Interstate Commerce Commission in The Illinois Coal Cases, 1920, 62 I.C.C. 741, which required restoration of the origin group relationship which had been disrupted by the percentage increases of

August 26, 1920. A corresponding adjustment was made in the intrastate rates on May 20, 1926.

On October 20, 1927, rates from western Kentucky were [fol. 75] increased 10 cents per ton in order to place them on a differential of 35 cents over the rates from southern Illinois, which differential was prescribed by the Interstate Commerce Commission in Docket No. 16340, 128 I.C.C. 255.

I might add here with respect to the rates to Dixon, that on July 1, 1930, in compliance with the order of the Illinois Commerce Commission in Docket No. 14009, previously referred to, a rate of $1.90 was published from southern Illinois to Dixon, a reduction of 14 cents per ton, the $1.90 rate being also observed as a maximum from intermediate groups, DuQuoin, Belleville, and Centralia. The rates from the Springfield group to Dixon were also reduced 14 cents per ton from $1.74 to $1.60, the southern Illinois and Springfield groups being the only groups mentioned in this order. These changes in the Dixon rates are shown on page 5 of Section 1 of this same Exhibit No. 4.

Returning to the rates to Rockford, effective August 20, 1930, under Ill. C.C. Dockets 13569 and 13558, which I have mentioned before, rates to Rockford and Freeport from all groups, except northern Illinois, were reduced 17 cents per ton. From northern Illinois the rates were reduced from $1.57 to $1.00 and the $1.00 rate was observed as a maxima to Dixon.

On November 15, 1937, rates were increased 10 cents per ton under Ex Parte 115 (reopened) and Ill. C.C. 23208. [fol. 76] On March 18, 1942, the interstate rates were increased 5 cents per ton under Ex Parte 148, and after a corresponding increase in the intrastate rates was refused by the Illinois Commission, the carriers filed a 13th section petition with the Interstate Commission, whereupon the Illinois Commission gave further consideration to its action and subsequently permitted the increase to be made on intrastate traffic. The state rates were then increased 5 cents per ton effective April 20, 1942.

Q. You have explained that the carriers here propose a 15-cent increase in the rates to Rockford. Will you please explain what increases are proposed to the other points in this destination territory.

A. The important points in this adjustment are Rockford and Freeport where an increase of 13 cents per ton is

proposed, this same increase being extended east to Belvidere, Illinois.

Mr. Cardy: No, Mr. Hamilton, you are not talking about northern Illinois when you say 15 cents, as I understand your testimony; you are not dealing with the northern Illinois situation?

The Witness: No, sir, I am not. The increase as shown on Robertson's Exhibit No. 2 is graded back in the following manner: To destinations on the Milwaukee Railroad, Forreston, and Byron, the increase is 10 cents per ton, which also sets the rate to Polo. The route from the south-[fol. 77] ern Illinois group to Chicago, via the North Western Railway from Peoria through Nelson sets a maximum of $2.05 (the Chicago rate) to Dixon, Rochelle, DeKalb, and Geneva. Sterling is continued the same as Dixon, and the Dixon rate also sets the rate to Amboy. To all of these stations an increase of 5 cents per ton is proposed. This is the same grading used in a former proposed adjustment which the Interstate Commerce Commission approved in I. & S. Docket 4368, 232 I. C. C. 151.

By Mr. Zoll:

Q. Are the present origin relationships continued under the proposed adjustment?

A. The present differentials under southern Illinois from DuQuoin, Belleville, Centralia, and Springfield, Illinois, groups are not disturbed, and the west Kentucky differential of 35 cents over southern Illinois is continued.

Q. What have you to say with respect to the level of the present and suspended rates to this northern Illinois territory?

A. That the present and suspended rates are on a low level can be seen from Section III of Exhibit No. 4. A summary of the data in that section, with respect to the rates from Southern Illinois, can be found in Section VII of the same exhibit, and it is Section VII to which I will direct my attention. If you will look at line 23 of page 2 of Section VII, covering Rockford, it will be seen that the average distance from the southern Illinois group is 369.2 [fol. 78] miles and the present rate is $2.10, which is only 61.2 per cent of the H. & H. scale. The suspended rate is $2.25, which is 65.6 per cent of the Holmes & Hallowell scale.

To Freeport, the average distance from the southern Illinois group is 371.2 miles. The present rate is $2.10, which is 60.2 per cent of the H. & H. scale, and the suspended rate is $2.25, which is 64.5 per cent of the H. & H. scale.

Q. Right there, Mr. Hamilton, section VII of this exhibit, page 2, column K, line 15, shows that the suspended rate of $2.25 is 65.6 per cent of the H. & H. scale. You say it is 64.5. I should also have said column L as well as K.

A. Those have both been corrected by Mr. Robertson's Exhibit No. 4-A to read 64.5.

Mr. Zoll: Proceed.

Mr. Wood: Which is correct?

The Witness: 64.5. To Dixon, the average distance is 311.2 miles. The present rate is $2.00 which is 63.9 per cent of the H. & H. scale, and the suspended rate is $2.05, which is 65.5 per cent of the H. & H. scale.

The present rates from southern Illinois range from 54.4 per cent of the H. & H. scale at Belvidere, to 63.9 per cent at Amboy and Dixon.

By Mr. Zoll:

Q. That is to the destinations as to which there are suspended rates?

A. To the representative destinations that are shown here [fol. 79] on this section VII of Exhibit 4.

Q. You don't mean comparative destinations—representative suspended?

A. Suspended destinations.

Q. Yes. Proceed.

A. The suspended rates from southern Illinois range from 58.3 per cent of the H. & H. scale at Belvidere to 65.6 per cent at Rockford. The earnings under the present rates range from 4.8 mills per ton mile at Belvidere, to 6.4 mills at Dixon. The earnings under the suspended rates range from 5.1 mills per ton mile at Belvidere, to 6.5 mills at Amboy and Dixon.

Q. And there again the earnings under the suspended rates to Dixon have been corrected in Exhibit 4-A, as I under stand it?

A. Yes, sir, they have been corrected from 6.6 to 6.5 mills.

Q. What have you to say with respect to the level of the present rates to nearby points in Illinois, southern Wisconsin and eastern Iowa?

A. This information is shown in Section IV of Exhibit 4, but as before, for convenience, I will address myself to the summary in Section VII of that exhibit.

Beloit, Burlington, Ft. Atkinson, Janesville, and Madison, Wisconsin, are in southern Wisconsin territory where in the Lake Dock Coal Cases, Docket No. 14476, 89 I. C. C. 170, decided May 6, 1924, the Interstate Commerce Com- [fol. 80] mission fixed a rate of $2.75 as maximum from southern Illinois, and this rate, plus the Ex Parte 115 (reopened) increase of 15 cents per ton, which made it $2.90, is now in effect to Burlington and Madison, Wisconsin. The average distance from southern Illinois is 404 miles to Burlington and 420 miles to Madison, and to both points the present rates are 77.7 per cent of the H. & H. scale.

Under this adjustment the rate from southern Illinois to Lake Mills was $2.78, and, with the Ex Parte 115 (reopened) increase, is now $2.93, which for an average distance of 476 miles, is 71.5 per cent of the H. & H. scale.

The rates to a part of this southern Wisconsin territory were again before the Interstate Commerce Commission in Docket No. 20912 (164 I. C. C. 543) and maximum rates from northern Illinois were prescribed. When, in compliance with this order, reduced rates were published from southern Illinois and other related groups to continue the existing relationship with the rates from northern Illinois, such reduced rates were suspended in I. & S. Docket No. 3536.

In its report in I. & S. Docket No. 3536, 174 I. C. C. 545, the Commission stated that since in a number of cases they had prescribed interstate rates from and to points in central territory, which were approximately 85 per cent of the H. & H. scale, they did not feel warranted in approving as reasonable maxima the proposed rates, which were [fol. 81] 72 per cent to 79 per cent of this scale, or in condemning as unreasonable the rates then in effect, which ranged from 80 per cent to 87 per cent of the H. & H. scale.

To Janesville, the present rate is $2.79, which for an average distance of 422 miles, is 74.8 per cent of the H. & H. scale. To Ft. Atkinson, the present rate is $2.83, which for an average distance of 462.1 miles, is 71.1 per cent of the H. & H. scale. These rates were prescribed by

the Interstate Commission in Docket 25419, 251 I. C. C. 181. In this same order the Commission found the rates to Beloit not unreasonable but unduly prejudicial to Beloit and preferential of Rockford to the extent they exceeded the rates to Rockford by more than 15 cents per ton. The present rate of $2.40 from southern Illinois to Beloit is 64.3 per cent of the H. & H. scale and is already on a lower level than the rates to other representative points in Wisconsin to which the Commission has prescribed maximum rates.

To Dubuque, Iowa, the present rate on lump coal from the southern Illinois group is $2.89. This is the $2.74 rate which was prescribed as maximum reasonable by the Interstate Commerce Commission in Docket 26558, 232 I. C. C. 5, plus the Ex Parte 115 increase. The present rate is 77.5 per cent of the H. & H. scale. The rate of $2.45 which presently applies on fine coal, was established because of river competition.

[fol. 82] In I. C. C. Docket No. 23130 and related cases, 182 I. C. C. 537, the Interstate Commerce Commission found that Davenport, Iowa, Rock Island, Illinois and Moline, Illinois, should be treated as one industrial and commercial community and accorded the same rates. The Commission there prescribed a rate of $2.10 from southern Illinois to those points, which with the addition of the Ex Parte 115 increase is now $2.25, and equal to 68 per cent of the H. & H. scale. The same interstate rate, of course, applies to Rock Island and Moline and is equal to 68 and 69.2 per cent, respectively, of the H. & H. scale.

The intrastate rate to Rock Island and Moline from southern Illinois, however, is $2.20, or 5 cents less than the interstate rate, because the Illinois Commerce Commission ordered the Ex Parte 113 increase based on applying the scale to the rate from the Springfield group, with the same increase in cents per ton from southern Illinois, instead of concurring in the basis authorized by the Interstate Commerce Commission of applying the scale increase to the base group, southern Illinois, with the same increase in cents per ton from other related groups. This resulted in a 10-cent increase in the intrastate rates and 15 cents in the interstate rates.

To Clinton, Iowa, the Interstate Commerce Commission, in Docket 15228, 128 I. C. C. 293, approved as not unreason-
[fol. 83] able a rate of $2.34 from southern Illinois, but to

comply with the Fourth Section of the Interstate Commerce Act it was necessary to reduce the rate to the level of the rate to Davenport, or $2.10. The rate to Clinton now, with the addition of the Ex Parte 115 increase, is $2.25.

To Savanna, Illinois, the present rate on lump coal from southern Illinois is $2.49, which is the former rate of $2.34 increased under Ex Parte 115. The rates to Savanna have not been before the Illinois Commerce Commission, but it will be noted that the Interstate Commerce Commission fixed a rate of $2.34 to Clinton, Iowa, and the distance from southern Illinois to Clinton is less than to Savanna. The present rate to Savanna is 70.1 per cent of the H. & H. scale.

The rates to Apple River, Illinois, have not been before the Illinois Commerce Commission but are included in our exhibits because of the geographical location of Apple River. The present lump coal rate of $2.53 is 71.3 per cent of the H. & H. scale. The present fine coal rate of $2.45 is the result of a water competitive rate published in Dubuque, Iowa, and observed as a maximum at Apple River.

Q. What have you to say respecting the level of the rates to Chicago?

A. To Chicago, for an average distance of 334.8 miles, the present rate from southern Illinois is $2.05, which is 63.1 per cent of the H. & H. scale and which yields 6.1 mills [fol. 84] per ton mile. There are numerous decisions of the Interstate Commerce Commission recognizing the competitive conditions that keep the rates to Chicago below a maximum reasonable level. There is an exceedingly heavy movement of coal to Chicago, which is conceded to be the largest coal consuming district in the country. Section IX of Exhibit No. 4 shows the movement of bituminous coal to the Chicago District for the past 15 years from the Illinois, Indiana, and west Kentucky groups and from the Ohio and Crescent Districts, via rail and via rail and lake. In 1941, this movement amounted to 30,422,379 tons, and over the 15-year period 1927-1941, which includes the depression years, it averaged 27,276,761 tons.

Because the rates to Chicago are far below a maximum reasonable level, as a result of the very heavy movement to that district, which has produced intensive competition from many origins and via numerous routes, the rates to Chicago cannot fairly be used as standards of comparison in con-

sidering the reasonableness of the rates to the territory which is involved in these proceedings.

Mr. Bather: Now, I will object to that statement, because it is a conclusion, and there is nothing to base any such statement upon as far as the testimony is up to this time.

Mr. Cardy: The only basis would be the rail transporta- [fol. 85] tion to those points, and in the absence of that I will have to object to it.

Exam. Trezise: The sole reason you have for making that statement is the concluding figures, and is that what you base your opinion on?

The Witness: I base it on the figures that I have already given and the figures that follow, showing there is a movement of 27 to 30 million tons of coal into Chicago, and following this I am giving some figures as to the movement into the territory involved.

Exam. Trezise: I think the Examiner will have to admit that as being his opinion based on these facts. Proceed.

The Witness: The competitive conditions that prevail at Rockford, Freeport, Dixon, and the other northern Illinois destinations to which increases are here proposed are entirely different from those which prevail at Chicago. For example, while over thirty million tons of coal were received in the Chicago District in 1941, including almost ten million tons from Illinois, Indiana, and west Kentucky, only 870,722 tons moved from Illinois, Indiana, and west Kentucky in 1941 to the seven representative suspended destinations shown on Robertson's Exhibit No. 5. The tonnage to these destinations from the Eastern Fields is not available, but to that part of northern Illinois on and north of the Santa Fe Railway's main line between Chicago, [fol. 86] Streator, Galesburg, and Lomax, Illinois, except Chicago and Chicago rate points, which includes considerably more territory than is involved in these proceedings, there were 788,060 tons received from the East in 1941. (Authority: Chairman Kern's Statistical Report.)

By Mr. Zoll:

Q. What have you to say about Mr. Robertson's Exhibit No. 5?

A. Exhibit No. 5 shows on page 2 a statement of tonnage and revenue for the year 1941 on coal from mines in Illinois, Indiana, and west Kentucky to seven representative sus-

pended destinations—DeKalb, Dixon, Freeport, Geneva, Rochelle, Rockford and Sterling, Illinois—from which it will be seen that there was in that year a movement of 508,322 tons of coal from mines in Illinois via intrastate routes to those seven points, on which the revenue was $967,468. There was a movement of 60,550 tons from Illinois origins via interstate routes to these seven Illinois destinations, a movement of 268,707 tons from Indiana, and 33,143 tons from west Kentucky. The total interstate movement amounted to 362,400 tons, with revenue of $722,190.

Page 3 of Exhibit No. 5 shows the tonnage which moved in 1941 via intrastate routes from Illinois mines to the seven representative suspended destinations shown. This tonnage totals 494,472 tons. This figure differs, it will be noted, from the total of 508,322 tons on page 2. This [fol. 87] comes about by reason of the fact that from northern Illinois to Geneva no increase was made because Beloit rate is held as a maximum and from Fulton County to Sterling there was no increase as will be explained by a subsequent witness, and 13,850 tons moving from those groups to those destinations, while included on page 2, was not included on page 3 since the carriers will receive no greater revenue on that movement under the suspended rates. In the next column is shown in cents per ton the amount the carriers here propose to increase the rates from the Illinois groups to those seven destinations. In the next column is shown the amount of additional revenue which the carriers would secure, on the basis of the 1941 tonnage shown, if the intrastate rates proposed were to become effective. That additional revenue totals $53,866.90. In other words, because the Illinois Commerce Commission suspended the proposed intrastate rates, the carriers are now being prevented from earning that additional revenue.

Q. Right there, Mr. Hamilton, incidentally, how much of the tonnage shown in Exhibit 5 moved in less than carload lots?

A. It all moved in carloads.

Mr. Zoll: Proceed.

Mr. Morgan: Between all points?

The Witness: All this tonnage that we have reported is carload tonnage.

[fol. 88] Mr. Morgan: In other words, you don't unload at a given city part of the car and deliver the rest of it at the nearby town or village or something?

The Witness: No, sir.

Mr. McElroy: Mr. Hamilton, I take it, up to this point—I have been paying some attention to your recitation—that your testimony is principally addressed to the discrimination between state and interstate rates, and goes to your 13th Section case rather than a justification of the proposal to increase the Illinois intrastate rates?

The Witness: Well, it goes to the justification of the 13th Section case, which carries with it the increase in the Illinois intrastate rates.

Mr. McElroy: Yes, that is what I had in mind. It is your 13th Section complaint that you are proposing to justify now, rather than the increase in the Illinois intrastate rates before the Illinois Commerce Commission.

The Witness: This particular comparison here is to show that the intrastate rates are prejudicial to the interstate rates. I have already shown the level of the intrastate rates, both present and proposed.

Mr. Cardy: This intrastate rate, the present rate, 5 cents lower, or the proposed rate 5 cents higher—in other words, the rates that you have here exclude the increase of 5 cents under 148?

[fols. 89-91] The Witness: The increase under 148 is not included in these figures, no, sir.

Mr. Cardy: So that the present rates would be 5 cents higher than these rates shown here charged today?

The Witness: The rates including the 148 would be 5 cents higher. All my testimony has been toward the level of the base rates, not including Ex Parte 148 increase.

Mr. Cardy: Has this anything to do with the proposed rates that are not now in effect in Illinois?

The Witness: Yes, it has a lot to do with it.

* * * * * * *

[fol. 92] The Witness: As I previously explained, the rates from Illinois and Indiana mines to this territory are so related that in view of the suspension of the intrastate rates the carriers could not publish increases in the interstate rates from the Indiana groups nor from the Illinois mines from which interstate rates to this northern Illinois territory apply. Nor could they publish such increased rates from

west Kentucky since those rates are differentially related to the rates from southern Illinois. On page 3 of Exhibit No. 5 there is also shown, therefore, the amount of revenue which the carriers have been prevented from securing on the interstate coal traffic moving to the seven representative suspended destinations shown. This is figured in the same way as on the intrastate movement, and totals $50,648.30.

The total additional revenue which would accrue to the carriers if the proposed intrastate and interstate rates were to become effective, based on the 1941 movement to these seven destinations, is $104,515.20. Since this relates only to seven of the numerous points in this destination territory to which the proposed increases have been published to apply, the total revenue discrimination far exceeds that figure.

Page 4 of Exhibit 5 is self-explanatory, and shows what [fol. 93] the effect would be if the carriers had to comply with the order in Docket 25419 by reducing their rates to Beloit. Not only would they be forced to maintain their rates to this northern Illinois territory on the present low level, but that level would tend to spread into southern Wisconsin. Based on the 1941 movement to Beloit, the carriers would lose $21,142 if they had to reduce the Beloit rates 15 cents in order to comply with the order in Docket 25419. The carriers would, of course, vigorously oppose the extension of this low rate level further into Wisconsin, but the showing on page 4 of Exhibit No. 5 shows the potentialities in requiring a reduction in the rates to Beloit.

Section XI of Exhibit No. 4 indicates in another way the danger of using the low rates to Rockford to fix the level of rates to southern Wisconsin. The present rate of $2.10 per ton from southern Illinois to Rockford is 61.2 per cent of the H. & H. scale. If these commissions should deny the proposed increase to Rockford, and this same level of 61.2 per cent of the H. & H. scale were projected to Beloit, Ft. Atkinson, Janesville, and Lake Mills, Wisconsin, from all origin groups, the carriers' revenues, based on the 1941 tonnage to those points, would be reduced $38,509.

Going one step farther, if the present rates to Rockford are continued in effect, and in compliance with the Section 3 order in Docket No. 25419, the Beloit, Wisconsin, rates are [fol. 94] reduced 15 cents per ton from all groups, the resulting rate of $2.25 from southern Illinois to Beloit would be 60.3 per cent of the H. & H. scale. Applying this level of

60.3 per cent of the H. & H. scale to Beloit, Ft. Atkinson, Janesville and Lake Mills, Wisconsin, the carriers' revenues, based on the 1941 tonnage to those points from all groups, would be reduced $42,772.

The decision in this proceeding will decide whether the Interstate or the Illinois Commission is going to determine the level of the interstate rates into southern Wisconsin.

By Mr. Zoll:

Q. Have the carriers given any thought to whether the increased rates proposed would in fact yield increased revenues?

A. The carriers have given consideration to the effect of the proposed increased rates on their income and have concluded that there is no doubt but that the raising of the rates would increase their revenues substantially.

Q. What is the likelihood of the proposed increases resulting in the substitution of natural gas for bituminous coal in this destination territory?

Mr. Morgan: I object. The witness is not qualified to testify as to the use of natural gas and the plants that use it in this territory.

Exam. Trezise: Can you lay a foundation for the question?

[fol. 95] By Mr. Zoll:

Q. How long have you been dealing with coal rates on the Illinois Central?

A. 28 years.

Q. Does the Illinois Central serve this territory?

A. Part of it.

Q. In your construction in making of coal rates, don't you have to give consideration as to whether you are going to make money or whether it is going to drive the business to something else?

A. We have to give consideration to what effect the rate adjustment will have.

Mr. Zoll: I submit to that extent, Mr. Examiner——

Exam. Trezise: Well, the point the Examiner had in mind is this: What do you know about the use of gas in this territory, the probable use of it, whether it is supplied in this territory, and how you came about getting that information.

Mr. Zoll: That is the very question I asked him. In his answer he undertakes to tell just that.

Exam. Trezise: If he has said that he has been through this territory, that he knows what the pipe lines are in each of these towns, that he knows so much is consumed there, and how much it is, and what effect it has had on the coal, and the details of it—I didn't understand he had done that. Perhaps I was asleep.

[fol. 96] The Witness: Mr. Examiner, I haven't made the investigation to the extent that you indicate, but I have made some investigation.

Exam. Trezise: And that investigation consisted of what? Did you go to the territory?

The Witness: I didn't go personally, but——

Exam. Trezise: Did you visit the towns?

The Witness: I did not, but one of our representatives did and reported to me.

Exam. Trezise: Some one under your direction did this?

The Witness: Yes, sir.

Exam. Trezise: Very well. What was the report, then—as you have given it here? What have you given?

The Witness: I haven't given it yet. I haven't answered yet.

Exam. Trezise: All right. Now, if this investigation was made under your direction, you can surely give the result of this investigation. Go ahead.

Mr. Morgan: I presume the report of that investigation, Mr. Examiner, would be in writing and it will be available when we get to cross-examination, and that it would indicate the date of the report and all the other factors inquired into by the gentleman who made the investigation.

Mr. Zoll: Proceed, Mr. Hamilton.

The Witness: Natural gas is available to a part of this [fol. 97] territory by virtue of a pipe-line extension from a point near Geneseo, Illinois, from the pipe-line reaching Chicago. The extension goes in a northeasterly direction to the Illinois-Wisconsin State Line near Beloit. From this line and its branches, natural gas is available at Morrison, Sterling, Dixon, Mt. Morris, DeKalb, Belvidere, and the industrial district in southeast Rockford.

* * * * * * *

Exam. Trezise: May the Examiner ask you, Mr. Hamilton, [fol. 98] the information you gave in the last sentence,

I believe, that you read, on your testimony there, was the information that was given to you by the one that you directed to make the investigation, is that right?

The Witness: Yes, sir.

Exam. Trezise: Very well. We will let it stand at that and you may cross-examine, Mr. Bather.

Mr. Bather: All right, Mr. Examiner.

The Witness: However, in our judgment, and based on our past experience, I do not believe the proposed increases will result in any appreciable loss of coal tonnage to natural gas because the price of gas, sold for the heating of houses, small apartments, and hotels, and for use in laundries and small industries not located on railroad sidings, is higher than these consumers would have to pay for coal. These consumers in practically all cases are willing to pay more for gas because of the convenience, cleanliness, and ease of operation connected with the use of gas. The cost factor is not a consideration when converting from coal to gas. When a gas company seeks an outlet to take care of its surplus capacity while it is developing sufficient domestic outlets to take care of its entire supply of gas, the result is that to large manufacturing institutions the gas company usually makes any price that is necessary to get them to convert the plant from coal to gas.

. . . . . .

[fol. 99] Exam. Trezise: This is the information that you obtained through the men that you directed to make the investigation, and they reported to you, as a matter of fact, that it was the usual practice of gas companies to make any price that is necessary to get them to convert the plant, you say, from coal to gas. Did you get that information from them, or is that a conclusion you drew from some other observation that you made? Did the men give you this?

The Witness: No, sir, they did not. I got that from our past experience in connection with gas competition at other points.

Exam. Trezise: And that was not something that you gained from somebody else, but in the scope of your occupation you have had occasion, have you, to go out and find this to be a fact?

The Witness: That is the experience that we have had [fol. 100] in connection with competition of natural gas at various points on the line.

Exam. Trezise: And that comes from your own investigation and your own knowledge, and under those circumstances we will let that stand.

Mr. Morgan: Mr. Examiner, could the witness state the points which he refers to?

Mr. Biaett: He can upon cross-examination.

Mr. Morgan: We are dealing with a northern Illinois case here.

Exam. Trezise: I think it would be proper to state what points you have in mind, where this applies.

Mr. Morgan: The points on which he bases this information on or obtains this information on, as he applies it to northern Illinois.

Mr. Zoll: It seems to me, Mr. Examiner, that is proper cross-examination.

Exam. Trezise: No, that is in explanation, as I understand it, of his statement. When you say, it usually is true, this particular fact that is stated, now, do you mean in this territory, of course, northern Illinois?

The Witness: No, not exactly northern Illinois, because we haven't had that same experience in northern Illinois.

Exam. Trezise: Where did you mean then?

The Witness: Well, for example, at East St. Louis, where [fol. 101] they are right near coal mines, plants have gone to gas; out in Iowa the rates are considerably higher, they have gone to gas regardless of the freight rates.

Exam. Trezise: And you apply that principle as possibly being applicable to this northern territory at some time?

The Witness: Yes, sir.

Exam. Trezise: And you didn't mean to indicate that this statement applied particularly to these points up here?

The Witness: No, sir.

Exam. Trezise: But only in principle it might be applied?

The Witness: That is right.

Exam. Trezise: Does that answer your question, Mr. Morgan?

Mr. Morgan: Well, it answers nothing, in my judgment.

Mr. Zoll: Mr. Examiner, I think we are getting away from the purpose of this. We are trying to explain to these Commissions why we have undertaken to increase the rates.

Exam. Trezise: All right, Mr. Zoll, let us proceed.

The Witness: In many of these situations the delivered cost of coal is unimportant. Our experience has been that

if the gas company wants to take a plant they do so regardless of the delivered cost of coal.

By Mr. Zoll:

Q. What is the likelihood of coal being supplanted by fuel oil?

[fol. 102] A. Fuel Oil is used in this territory to some extent for domestic consumption, and where so used the situation is very similar to the use of gas. It is usually more expensive than coal, but it is used because of the convenience, cleanliness and ease of operation connected with its use. Cost is not a paramount consideration. While under present wa. conditions there is a limitation placed on the use of fuel oil, even under normal conditions the freight rate on coal has little if any effect on the development and use of natural gas or fuel oil. I do not believe the proposed increases will result in any substitution of fuel oil for coal.

Q. What is the likelihood of the proposed increases resulting in a greater use of coal from the eastern fields?

A. I do not believe that the proposed increases in freight rates will result in increasing the movement of coal from the Crescent Districts at the expense of Illinois, Indiana and west Kentucky because the rates on Eastern coal will still be much higher than the rates from the Central field. Where the eastern coal does displace Illinois, Indiana and west Kentucky coal, it is because of better quality, especially for certain purposes.

Q. What is the likelihood of the proposed increases resulting in diversion to other forms of transportation?

A. From the southern groups there is no trucking of coal [fol. 103] to this destination territory, and increasing the rates 15 cents per ton will not in my opinion cause any such trucking to begin. Another witness who will deal with the rates from the more northern groups will explain the situation with respect to those groups.

Mr. Zoll: Is there anything you want to add, Mr. Hamilton?

The Witness: I think not.

Exam. Trezise: We will take a few minutes recess.

(A short recess was taken.)

Exam. Trezise: Let us proceed, gentlemen.

Mr. Donoho: I would like to ask a few questions on cross-examination, Mr. Examiner, if the witness is ready for cross.

Exam. Trezise: Very well.

Mr. Biaett: I have some questions on direct examination.

Exam. Trezise: Very well. We will have the direct first.

Mr. Morgan: May I inquire, then, of the Examiner, is this witness being adopted by all of the other railroads?

Mr. Biaett: This witness is adopting all of the other railroads.

Morgan: What is that?

Mr. Biaett: This witness is testifying for all of the re-[fol. 104] spondent railroads.

Mr. Morgan: Very well.

Exam. Trezise: Proceed.

By Mr. Biaett:

Q. Mr. Hamilton, in the course of your direct testimony you referred to the decision of the Commission in Docket No. 25419. Would you state a little more fully the result of that decision in setting a differential between Rockford and Beloit and in prescribing rates to Janesville and Fort Atkinson?

Mr. Morgan: I object, because the decision should speak for itself and be offered so that each party can read it and make its own interpretation of it.

Mr. Biaett: I beg counsel's pardon, but the witness is entitled to state the background of this proceeding.

Mr. Morgan: He can't give an interpretation of the decision. It should speak for itself.

Exam. Trezise: We have to find out what he is going to say about it. I think we will let him answer that question.

The Witness: The decision in I. C. C. 25419 set maximum rates to Janesville and Fort Atkinson, which were published.

By Mr. Biaett:

Q. From what group were they prescribed?

A. They were prescribed from the Fulton-Peoria group with the provision that the present relationship should be maintained from the other groups.

[fols. 105-106] Q. Now, proceed.

A. In the same decision the Commission found the Beloit rates not unreasonable, but prejudicial of Beloit and pref-

erential of Rockford to the extent that they exceeded the rates to Rockford by more than 15 cents.

Therefore, the carriers were required to do one of two things—either reduce the rates to Beloit by 15 cents a ton or increase the rates to Rockford by 15 cents a ton.

Q. Now, if that alternative order had not been issued by the Commission, the carriers would not be proposing the increased rates under suspension in these proceedings, is that correct?

A. That is correct. The only purpose—excuse me, let me start that again. That is correct. The present adjustment was brought about entirely by the order of the Commission in the Beloit case, 25419.

Q. Now, from a rate-making standpoint is Beloit so situated that if you reduce the rates to Beloit it would jeopardize the adjustment of rates into the whole State of Wisconsin?

[fols. 107-108] The Witness: Yes, sir, that is correct.

Mr. Morgan: I think he should state what difference would be involved. For example, you have Beloit——

Mr. Biaett: Now, if you are not satisfied with the witness' answer, Mr. Morgan, you can trace him over all this whole territory on cross-examination.

Mr. Morgan: All right, we will trace him then.

Mr. Biaett: That will be your privilege.

Mr. Morgan: All right.

By Mr. Biaett:

Q. Now, Mr. Hamilton, in increasing the rates to Rockford, is the nature of this general adjustment of rates from the Illinois, Indiana and western Kentucky groups to northern Illinois such that the carriers took the position that in view of the decision of the Commission in 23130 and the decision in 25419, the rates should be increased to the general territory surrounding Rockford, such as Freeport, Dixon, Belvidere, Amboy and those points?

[fol. 109] The Witness: In increasing the rates to Rockford to comply with the order in 25419, it would not be [fol. 110] proper to make an increase to Rockford alone, but the territory there, Rockford and Freeport and Belvidere, are on the same basis as Rockford, and if a change was made to Rockford it would necessarily follow that the same change should be made to those points, and in making

an adjustment of that kind it is necessary to grade back so that it wouldn't be too abrupt a change. And I already explained why the grading to some of the intermediate points was made an increase of 10 cents and others 5 cents, to make what was considered a proper adjustment of rates into that territory.

Mr. Cardy: Now, I move to strike that answer out for the reason it is a conclusion of the witness and is something that the Commission must pass upon, based upon facts submitted. He talks about general levels where you have got a complicated rate situation, and that answer is a very dangerous answer, and I move to strike it out.

Exam. Trezise: The motion is overruled. Go ahead.

By Mr. Biaett:

Q. In Docket No. 23130 were the rates to these towns in northern Illinois, to which you have referred, omitted and not increased?

A. In a decision in Docket 23130, where the railroads asked the Interstate Commerce Commission to increase the rates to Rockford, Freeport and Dixon, they stated that they were on a lower level, lower than to the territory generally, [fol. 111] but that the same situation existed from Indiana, and therefore, an increase would not be ordered from Illinois unless or until the Indiana rates were on more nearly the same level as the Illinois rat into this territory.

. . . . . .

[fols. 112-115] By Mr. Biaett:

Q. Would the reduction of the rate to Beloit be consistent with the carriers' position of increasing the rates to this northern Illinois territory to a level commensurate with the interstate level of rates into Wisconsin?

. . . . . .

[fol. 116] The Witness: The answer to that question is, no.

Exam. Trezise: All right. Now, answer this question, Mr. Hamilton, do you know of any rate in the Illinois territory that is as low as $2.10 from southern Illinois for 369 miles, as the rate to Rockford?

[fol. 117] The Witness: No, sir, I do not.

Exam. Trezise: Do you know of a rate that the Commission passed upon from western Kentucky to Chicago?

The Witness: Yes, in I. C. C. 28629, they ordered a rate of $2.40 from West Kentucky to Chicago, and then reduced to $2.30.

Exam. Trezise: Do you know that request has been made to reopen that case?

The Witness: Yes, petitions to reopen the case have been filed and are pending, so far as I know.

Exam. Trezise: Do you have any questions, Mr. Stadell?

Mr. Cardy: Mr. Examiner, I have one question right on that particular point. Are you familiar with the rate from the southern Illinois to Chicago on ex-lake coal recently established by your company?

Mr. Biaett: I wish to object to that.

Exam. Trezise: Well, I think we will let him answer that. Do you know about an ex-lake rate on coal that the Commission approved to Chicago?

The Witness: Yes, sir.

Mr. Cardy: What is the rate?

The Witness: From southern Illinois?

Mr. Cardy: To Chicago.

Exam. Trezise: That is a lake-cargo coal rate, is that what you mean?

[fol. 118] Mr. Cardy: That is true. What is the rate?

The Witness: I believe it is $1.65.

Mr. Cardy: Now, what is your rate from Springfield, Illinois, to Chicago, for deliveries in the Chicago switching district on certain carload movements, which is lower than—strike it out—with deliveries to the Commonwealth Edison plant; give me the rate and the distance.

The Witness: You are asking about the local rate?

Mr. Cardy: Local rate.

The Witness: Not this lake-cargo rate?

Mr. Cardy: That is true; with deliveries to Commonwealth Edison plants, recently established.

The Witness: The rate from the Springfield district?

Mr. Cardy: It is all right. I just got that rate. This lake-cargo rate——

Mr. Wood: Mr. Examiner, are we on direct or cross?

Exam. Trezise: This is direct up to the present time, as I understand it.

Mr. Wood: I just wondered how many lawyers were going to take charge of the witness on direct.

Mr. Cardy: I was just asking about the level of the rates in order that the witness might give a full and com-

plete answer to the question. He only gave half an answer. I want him to give the full answer, and I think he has given it. Only I want to ask another question: whether or not [fol. 119] this $1.65 rate does not contemplate the movement of a carload of coal to Chicago through the Chicago switching district, placed upon a siding out here at South Chicago; does it not?

The Witness: It does and it applies only on coal that is to be delivered for cargo movement via lake to be delivered to the boat.

Mr. Cardy: That is exactly the same as a local movement to Chicago from southern Illinois, is it not?

Exam. Trezise: Well, do you know of any other rate like the rate from southern Illinois to Rockford, that is used in a proportional way, or is it trainload or something of that nature? Do you know of any rate that is as low as this rate to Rockford from southern Illinois?

The Witness: No, sir.

Mr. Cardy: Are you sure about that, Mr. Hamilton? If he is, just let him say so.

The Witness: Just one thing, Mr. Examiner, did I understand you to include in that the lake-cargo rate?

Exam. Trezise: You know, of course, that the lake-cargo rate is on a lower basis?

The Witness: Yes, sir.

Exam. Trezise: You know, do you, that the lake-cargo rates are usually made—not usually—you know that the lake-cargo rates from the east to Lake Erie ports are lower [fol. 120] than the track delivery rates, aren't they?

The Witness: I believe they are.

Exam. Trezise: And the rates to Chicago, the lake-cargo rates, are lower than the track delivery rates by about 50 cents, aren't they?

The Witness: Yes, they are; not quite 50 cents; that is what they tried to get.

Exam. Trezise: The rate to Rockford, is it a lake-cargo rate or track delivery rate?

The Witness: Track delivery rate.

Exam. Trezise: All right. I am coming right back to my original question. You answered it, no. But you don't know of any other rate that is as low as the rate from southern Illinois to Rockford for 369 miles. I think you have it in one of your exhibits.

The Witness: That is right.

Mr. Bather: May I ask, Mr. Examiner, is that answer predicated upon a rate within the State of Illinois, or does that apply to interstate rates from southern Illinois to interstate destinations?

The Witness: Well, I can't keep all of the mileages in my mind. That answer goes to either state or interstate.

Mr. Bather: In other words, your answer is, no, that there are no other rates, state or interstate, comparable with the present rate of $2.10 from southern Illinois to Rock-
[fols. 121-122] ford?

The Witness: That was not it. The answer was, or rather, the question was, did I know of any that were as low as that, and I said, no.

Mr. Bather: You don't know of any?

The Witness: I didn't say there were none.

Mr. Bather: But you don't know of any?

The Witness: No.

* * * * * * *

[fol. 123] Morrison Hotel, Chicago, Illinois,
March 19, 1943.

Met, pursuant to adjournment, at 10 o'clock A. M.

Before R. N. Trezise, Examiner, Interstate Commerce Commission. F. B. McElroy, Illinois Commerce Commission.

APPEARANCES:

As heretofore noted.

PROCEEDINGS

Exam. Trezise: Very well, gentlemen. We will continue.

Mr. Ehmann: Mr. Examiner, before you proceed, I would like to enter my appearance, if I may.

Exam. Trezise: Very well.

Mr. Ehmann: William F. Ehmann, 1 West Main Street, Madison, Wisconsin, appearing on behalf of the Wisconsin Coal Bureau, Incorporated, in Docket No. 28881, Docket No. 28888, and I. & S. Docket 5139. If petitions of intervention are necessary, Mr. Examiner, I will have them prepared.

Exam. Trezise: As far as the Interstate Commerce Commission is concerned, it is not necessary to file an interven-

ing petition in connection with the case where we have an I. & S. proceeding, and we are not hearing the 28888 yet.

Mr. Elliott: Mr. Examiner, I would like to enter my appearance, if I may. Joseph W. Elliott, representing [fol. 124] Fairbanks, Morse & Company, and Beloit Commercial Club, in Docket No. I. & S. 3139.

Exam. Trezise: Do we have any questions that anyone would like to ask Mr. Hamilton?

Mr. Wilkinson: In due course I have a few that I would like to ask him.

Exam. Trezise: Very well, Mr. Wilkinson, proceed.

B. M. Hamilton resumed:

Cross-examination.

By Mr. Wilkinson:

Q. Mr. Hamilton, in your statement yesterday you said you were going to talk only about the Illinois rates into this territory, but you made some statements regarding the level of the interstate rates from Indiana, referring to the decision of the Interstate Commerce Commission in 182 I. C. C. 537, the old 13th Section case. Now, is that language referred to in your statement at page 4, which I take to be a quote or a summary of the language of the Interstate Commerce Commission, is that the only knowledge you have regarding the level of the rates from Indiana into this territory?

A. That is not the only knowledge, no, sir. That reference to the decision of the Commission was given as one basis for our publishing these increased rates.

Q. In your statement that you made yesterday you were [fol. 125] not, as I understand you, expressing any opinion of your own, however, as to whether the rates from Indiana to this involved territory were on a higher or lower or the same level as the rates from Illinois to the involved territory.

A. My discussion regarding the rates was in connection with the rates from Illinois, and the reference to the level of the rates was simply given to indicate the basis for our proposed rates and why we increased them instead of reducing Beloit.

Q. Well, if the exhibits of the carriers should indicate or do indicate that the level of the rates from Indiana are

now higher than the level of the rates from the Illinois origin groups to this territory, would you still think it would be necessary to increase the rates from Indiana?

A. Yes, sir, I would.

Q. Is that because of your anxiety to comply with the Commission's order affecting the rates to Beloit, or because of the 13th Section petition that is pending, that you make that answer?

A. Well, not any particular anxiety; it is on account of our being required by the Commission to publish certain rates, making them applicable to Beloit, and we don't want to unnecessarily reduce the rates and lose our revenue and possibly jeopardize the adjustment of rates to other points.

Q. Well, is there any reason that you may have why the level of rates within Illinois to this territory should be lower [fol. 126] than the level of rates from Indiana to this territory?

A. Well, in the 13th Section case we were unable to get the Illinois rates increased unless the Indiana rates were also increased, and whether they are on exactly the same level, it is probably very difficult to bring that about.

Q. Well, how about it being approximately the same—would you think that would be proper?

A. Well, in some cases the Indiana rates are on a lower level now.

Q. Well, I am asking you if you think it would be proper to have the average of the rates from Indiana and the average of the rates from Illinois points into this territory on approximately the same level.

A. Yes, I think they should be on about approximately the same level.

Q. If your exhibits show that the proposed rates from the Illinois points to these involved destinations shown on Exhibit 2 were approximately the same level as the present rates from the Indiana groups to these same destinations, do you still think it is necessary to increase the rates from Indiana to these destinations?

A. Yes.

Q. Why?

A. Because the Commission has already told us that they will not increase the Illinois rates unless the Indiana rates [fol. 127] are increased.

Q. Well, you are familiar with the proceeding in which that statement was made; you were in that case, were you not, Mr. Hamilton?

A. Yes, sir.

Q. And you know that that statement was predicated on a comparison of rates from certain Indiana groups to Rockford and rates from southern Illinois to Rockford in which the distances from Indiana were the average of the short tariff routes, while the distances from southern Illinois were the so-called rate-making line route?

A. No, sir.

Q. You don't know that?

A. No.

Q. Now, Mr. Robertson spoke about the representative destinations being selected by a committee or a group of representatives of the various carriers. Were you one of the group that selected these representative destinations?

A. Yes, sir.

Q. In what sense, Mr. Hamilton, are these destinations representative?

A. Well, they are representative because they are in the same general territory.

Q. They use substantial quantities of coal, most of them?

A. Most of them.

[fol. 128] Q. And represent the general level of rates from the southern Illinois field for the distances involved—is that another factor of their being representative?

A. Well, they are representative because most of them have been passed upon by the Commission.

Q. Are they representative of the rate adjustment as between the Illinois groups?

A. I think they are, yes.

Q. Are they representative of the rate adjustment as between the Indiana groups?

A. Well, I have my own views about the adjustment between the Indiana groups.

Q. So they would not be representative of that?

A. Not entirely.

Q. And would you think they were representative of the general adjustment that exists between the Indiana groups, on the one hand, and the Illinois groups, on the other?

Exam. Trezise: From a rate standpoint?

Mr. Wilkinson: Yes.

The Witness: I think they are representative as to the territory to which the rates from Illinois and Indiana apply, and that they should be on a relative basis.

By Mr. Wilkinson:

Q. They are not representative as they stand today in their rates on the relationship that existed between the Indiana groups and the Illinois groups prior to the reduc-
[fol. 129] tions in Illinois in 1930, are they?

Mr. Zoll: I don't think I quite understand that.

Mr. Wilkinson: Will you read the question, Miss Reporter?

Mr. Zoll: I heard the question. I don't have to have it read. If the witness understands it, he may answer it.

The Witness: I understand from your question, did the reductions from Illinois by reason of the orders that have been referred to change a relationship that previously existed?

Mr. Wilkinson: Yes.

The Witness: Naturally, when Illinois went down and Indiana did not, it changed it.

By Mr. Wilkinson:

Q. So that they don't represent the relationship that existed prior to those orders of the Illinois Commission?

A. No; it represents the relationship that existed since that time.

Q. Now, in Exhibit No. 2 you show destinations in southern Wisconsin, some in Illinois and some in Iowa, and those were referred to as comparable destinations or comparative destinations. Now, are they comparable to the destinations within the involved territory with respect to distance of haul?

A. Well, from the same origin points, because they are slightly beyond the territory that is involved here, the distances are a little bit longer.

[fol. 130] Q. Now, are they comparable as between the Illinois groups with respect to the relationship in the rates with the representative destinations within the involved area?

A. They are not in all cases.

Q. Will you point out an instance where as between the Springfield group, on the one hand, for example, and the southern Illinois group, on the other, the differential of

Springfield under southern Illinois is other than 30 cents per ton?

A. Well, I would have to sit down and check the tariffs to tell you that.

Q. Well, how do you know then that they are not comparable in their rate relationship in all instances?

A. I understood your question to mean, is there the same difference from all groups to all of these destination points.

Q. Well, I am talking about the groups in Illinois in the general rate adjustment. Now, we will take first southern Illinois and Springfield. So far as you know, at all the representative points and at all the comparative points the differential is 30 cents Springfield under southern Illinois, is it not?

A. I wouldn't say that without——

Q. Without checking the tariff?

A. Yes.

Q. And you couldn't say as to southern Illinois and Belleville to these points without checking the tariffs?

[fol. 131] A. No, sir. The differentials are not the same to all of the territory. They are different in Iowa.

Q. As between what particular groups in Illinois do they differ into Iowa?

A. Well, between southern Illinois and Belleville, for example, or Du Quoin.

Q. Is that true at any point other than Dubuque?

A. Yes. They are not the same in Chicago as they are to some of these other points.

Q. I was asking you then about Iowa and the ones in southern Wisconsin, northwestern Illinois, and northeastern Iowa, that you have shown as comparative points. Now, so far as you know, is there any difference in the relationship between southern Illinois and Belleville to any of these representative points shown in Wisconsin, northwestern Illinois, or Iowa, except Dubuque, Iowa?

A. Yes, there is a difference in the relationship.

Q. At which one of the comparative points does it differ?

A. Well, I would have to take the tariff and check it. I know they are not the same to all of this territory.

Q. Is it not a fact that to the comparative points shown in southern Wisconsin that the relationship between the Indiana groups, on the one hand, and the southern Illinois groups, on the other, is constant at all those points?

A. I think it is not constant.

[fol. 132] Q. You have studied these exhibits that were introduced by Mr. Robertson yesterday. Are you familiar with the rates set out in those exhibits?

A. Well, I couldn't say that I am familiar with all the rates that were in there.

Q. You have used in these exhibits, or in certain sections of these exhibits filed by Mr. Robertson, comparisons of the rates to the representative points and comparisons with the rates to the comparative points and measured those by percentages of the Holmes & Hallowell Scale. Do you believe that such a measurement of rates indicates the relative level of the rates compared?

A. Yes.

Q. That is, if the rate, for example, to Rockford was shown to be say 60 per cent of the Holmes & Hallowell Scale and the rate to Janesville was shown to be 70 per cent of that scale, you would arrive at the conclusion that the rate to Rockford was on a lower level than the rate to Janesville?

A. Yes.

Q. And you would arrive at the same conclusion if you were comparing the rate to Amboy and the rate to Janesville, if Amboy was 60 per cent of the Holmes & Hallowell Scale and Janesville 70 per cent, is that correct?

A. Yes.

Q. Now, suppose that in comparing the rate to Dixon with [fol. 133] the rate to Madison, you found the rate to Dixon, we will say, 64 per cent of the scale and the rate to Madison to be 66 per cent of the scale, would you conclude that the rate to Dixon was on a lower level than the rate to Madison? I don't know if those are the true comparisons, Mr. Hamilton. I am just assuming a slight difference in the percentages.

A. Well, of course, these scales, as you know, cover a group. I would say, yes, if it is a lower percentage, it is relatively lower.

Q. But it could be within 1 per cent either way or 2 per cent either way without showing a maladjustment of rates, in your opinion?

A. Yes. I don't think that it is possible, where you have a group adjustment of rates, to get them on the same relative percentage of any scale.

Q. But when it gets up to a split of 5 to 10 per cent, why, that would show there was something, a maladjustment of the rates, is that it?

A. Well, in this case, we are trying to publish rates to this territory that are on a normal basis, and it is impossible in any group adjustment to get the rates all on a uniform scale.

Q. Yes, I understood that. Now, what I wanted to know was your opinion in the use of these scales, as to whether or not a different measuring on the H. & H. scale, percent- [fol. 134] ages of 5, 6, 7, 8 per cent difference, would that in your mind indicate a maladjustment of the rates? I had previously understood that a variation of 1 or 2 per cent would not.

A. In my opinion, it would show that the proposed rates were not unreasonable if they were within a percentage of the points to which they were compared.

Q. What percentage? I am trying to get your mean and extreme of percentages that would in your mind indicate substantially the same level.

A. Well, I couldn't pin myself down to a figure on that.

Q. Now, you said that it was necessary to change these rates because of the Commission's order in the Beloit case. At the present time the rates from some of the Indiana groups are less than 30 cents per ton over the rates to Rockford—that is, the rates to Beloit are less than 30 cents per ton over the rates from the same mine to Rockford, are they not?

A. Yes, I believe they are.

Q. Now, why, Mr. Hamilton, in complying with the order of the Commission several years ago the carriers thought it proper to determine the rate to Rockford from southern Illinois and apply the standard differentials from all the other groups to Beloit, and at this time in complying with that order you think it is necessary to change the rates from the Indiana groups to Beloit so that they are exactly 15 cents over Rockford? What has happened since your com- [fol. 135] pliance in the previous decision?

. . . . . .

[fol. 136] The Witness: The reason we proposed to make the same increases was to continue the present relationship we had there.

By Mr. Wilkinson:

Q. The present relationship you had where, at Rockford or at Beloit?

A. At Rockford.

Q. Why is the relation at Rockford more desirable to continue than the relation that existed at Beloit?

A. Because of the record in the previous 13th Section case, 23130.

Q. You had that before you when you fixed the rates at Beloit, as the result of the decision in the 1st Beloit case, did you not, the Fairbanks-Morse case?

A. Yes.

Q. Is it not a fact that the relationship as between the Indiana groups that now exists at Beloit is the same relationship that exists throughout Wisconsin, Iowa, Southeastern Minnesota, as between the Indiana groups and southern Illinois, Springfield?

[fol. 137] A. I don't think it is, no, sir.

Q. Is the relationship between the Indiana groups, on the one hand, and the Illinois groups, southern Illinois, Springfield, different at Beloit than it is at Janesville?

A. I would have to check the rates to answer that.

Mr. Wilkinson: That is all, Mr. Hamilton.

Exam. Trezise: Along that line, Mr. Hamilton, you stated something about the differentials being different to your representative destinations. That is the relationship or differential between the origin groups in Illinois, for example, southern Illinois over the Fulton-Peoria group. What kind of sense or nonsense is there in a rate adjustment that has a 60 cent differential to Rockford, 80 cents to Beloit, 79 cents to Janesville, 67 cents to Fort Atkinson, and 70 cents to Lake Mills.

* * * * * * * *

[fol. 138] The Witness: Of course, it is not a very consistent adjustment.

Exam. Trezise: Then it is an inconsistent adjustment, is that it?

The Witness: Yes.

Exam. Trezise: Isn't it a fact the differentials for the nearby points are very frequently higher than to the farther distant points?

The Witness: Yes, that is a fact.

Exam. Trezise: And you have just the opposite situation [fols. 139-140] here, do you not? In other words, the differential is lower as between southern Illinois and Fulton-Peoria to Rockford and Beloit, than it is, well, clear up to Lake Mills.

The Witness: Well, I would like to say that to the shorter haul points the level of the rates from the short distances *are* usually somewhat higher than they are from the longer distances, and in that respect it would have a tendency to have the lower differential to the short haul points than to the longer haul points.

Exam. Trezise: Well, you know, or do you, that this 70 cent differential has quite a wide application, southern Illinois over Fulton-Peoria, so far as this destination territory is concerned in the northwest?

The Witness: Yes, it has.

Exam. Trezise: Perhaps that is the predominating differential, isn't it? That is, I mean there are more 70 cent differentials to more points than there are any other particular differentials.

The Witness: There seem to be up in Wisconsin. There is 60 cents and 50 cents differentials out in Iowa.

Exam. Trezise: Well, I didn't mean to go to a state where the Commission had undertaken to tamper with the differentials. That is all.

Mr. Vesey: I have some questions I would like to ask.

Exam. Trezise: Go ahead, Mr. Vesey.

. . . . . .

[fol. 141] By Mr. Vesey:

Q. Mr. Hamilton, as I understand it, it is your contention here that the level of rates which prevails in the northern Illinois destinations differs from the level of rates that prevails in southern Wisconsin, is that correct?

A. That is part of it.

Q. I mean, that is one of your contentions, isn't it?

A. There is no contention. That is one of the reasons that I gave for our proposed increase in the rates.

Q. And because of that reason or contention, put it either way, the carriers have suggested increased rates to the northern Illinois destinations, have they not, which rates are under suspension here in this proceeding?

A. They have, because of the order of the Interstate Commerce Commission that requires some adjustment in the rates as between Rockford and Beloit.

Q. And in determining the propriety of the rates which are under suspension here, which you are asking to go into effect, you have used the level of rates in southern Wisconsin as a basis for that request, have you not?

A. I have used the level of rates into Wisconsin which have been fixed by the Interstate Commerce Commission to show that the rates which we have proposed are not unreasonably high.

[fol. 142] Q. Is it your contention here in this proceeding that the level of rates which prevails in the southern Wisconsin territory, in the compared territory that is involved here, to the destinations, that that is a proper and reasonable level of rates which prevails in that territory?

A. I made no such contention. I have referred to the rates in Wisconsin that are approved by the Commission as being not unreasonable and, therefore, the rates which we have proposed, which are not as high as those rates, cannot be considered unreasonable.

Q. Then, in your opinion, is the level of rates which prevails in the southern Wisconsin territory a reasonable level of rates from the carriers' point of view?

A. So far as the carriers are concerned, they have to be governed by what the Commission tells us.

Q. I asked you your opinion. In your opinion, is it a reasonable level of rates?

A. Well, yes. I can't say that they are unreasonable.

Q. Certainly, and that is why you picked these destinations out as representing an overall characterization of that level of rates in the southern Wisconsin territory, isn't that right?

A. We picked them out because they have been passed on by the Commission, to show they were approved rates. That is the reason we picked them.

[fol. 143] Q. And the only reason these destinations are used is because they typify that level of rates in the southern Wisconsin territory, isn't that correct?

A. Well, I think I have made myself clear, that we took them because they have been passed upon by the Commission as being reasonable rates and, therefore, by comparison with the rates that we had proposed, which were a slightly

lower level than that, that these rates could not be considered unreasonable.

Q. In other words, you took it because you felt safe in taking that level, is that right?

Mr. Zoll: I object to the question, Mr. Examiner.

Exam. Trezise: Is that all?

Mr. Vesey: No, I have a question pending, that isn't answered.

Exam. Trezise: I thought you were satisfied with his other answer and you didn't want this one answered.

Mr. Vesey: No. I thought I had a question pending. At least I assume that I have.

Mr. Zoll: And I objected to it.

Exam. Trezise: You object to the question?

Mr. Zoll: Yes, sir.

Exam. Trezise: May we have the question read?

Mr. Vesey: To save time, let me go ahead.

By Mr. Vesey:

Q. In other words, from your point of view, Mr. Hamilton, the level of rates from the various origin groups in the [fol. 144] compared territory, in your opinion, is a reasonable fair level of rates to all parties concerned, isn't that right?

A. Well, the question involved here is not one of readjusting rates to put them on any particular level. The question here before us is that we must comply with an order of the Commission, and we have to do it in one of two ways, and we have explained why we proposed the rates we did. We have shown that those rates proposed are not higher than the level of rates that have been passed on by the Commission to points in that general territory.

Q. Now, Mr. Hamilton, you know that isn't an answer to my question, don't you?

A. No, sir, I do not. I think it answers your question.

. . . . . .

[fol. 145] Exam. Trezise: Let us get down to the point the witness already made. He said he thought it was a reasonable basis that you propose, is that right?

The Witness: Yes, sir.

Exam. Trezise: Now, how about this fair, proper and equitable, and all that? Did you say that?

The Witness: No, sir.

Exam. Trezise: Well, all right. Now we have divided the question. Now you can ask him about the fair and equitable. I don't know how far that will carry us.

By Mr. Vesey:

Q. I take it from that answer, then, Mr. Hamilton, that there are rates applying from certain of the origin groups [fol. 146] to the compared territory which in your opinion are not a reasonable fair level in view of the other rates prevailing from other origin groups to that territory, is that correct?

Mr. Kaier: All he said was that he was not answering that question.

Mr. Vesey: I didn't say he was.

Mr. Kaier: Yes, but now you are putting something different in his mouth.

Exam. Trezise: He has added fair and equitable now to his question. Do you want to go along with him on that?

The Witness: I think the Commission is the one that has to pass on whether they are equitable.

Mr. Vesey: Mr. Hamilton, I am not interested in what the Commission has got to do. I am asking for your opinion.

Mr. Zoll: I submit our opinion doesn't have anything to do with that, because the Commission has said it is reasonable. If you want my opinion, I think they could be a lot higher.

Exam. Trezise: Well, let us get the answer from the witness. Have you anything to say with respect to the fair and equitable nature of your proposal, or with respect to these rates or any other rates that you can think of, and what do you know about it? Now, he wants you to tell him.

The Witness: Well, I think the proposed rates are fair.

By Mr. Vesey:

Q. You mean to the compared territory, are you speaking [fol. 147] about, or the proposed rates as proposed by the carriers in this proceeding, which?

Mr. Cardy: Mr. Hamilton, that doesn't include rates from northern Illinois; you said you would not testify anything about the rates to northern Illinois, and your answer doesn't deal with the northern Illinois situation, is that true? The

Examiner split the question, and I want it split, if possible.

Mr. Biaett: He was asked the question, from all groups. I think the two protestant counsel should get together if they want the question split up on it.

Exam. Trezise: Let us see how far we have gotten now. He said he thought it was fair.

Mr. Vesey: I had a question pending along here somewheres and I think it got lost. Will you read my last question, Miss Reporter.

(Question read.)

The Witness: Well, my remarks about the level of the rates was to the suspended rates.

By Mr. Vesey:

Q. Now, I asked you about the rates to the compared destinations, as to whether or not you thought those rates were reasonable and proper rates.

Mr. Kaier: Mr. Examiner, hasn't he said half a dozen times that the Commission has fixed them as reasonable, and shouldn't that end it?

[fol. 148] Mr. Vesey: Well, off the record, to save time——

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Perhaps the Examiner can help you or confuse you. I don't know which. Mr. Hamilton, you said the reason you selected these rates that you have characterized as reasonable here, was it because these points just over the line into Wisconsin are in the same general rate territory? Could that have been one of the reasons?

The Witness: That was one of the reasons, yes, sir.

Exam. Trezise: You said that was not your only reason. I was just wondering whether you were advocating a different basis of rates at that state line up there for some reason and if you had any reason for it, tell us why.

The Witness: No, I was not advocating any different basis of rates. We selected those points because they were in that same general territory, surrounding the territory involved, and because the rates had, most of them, been passed on by the Interstate Commerce Commission and approved as not unreasonable and, therefore, we thought it was a fair comparison to show that to the territory where we

were proposing the increases that they were not on any higher level than the rates to these points where the Interstate Commerce Commission had already approved rates as being not unreasonable.

[fol. 149] Exam. Trezise: Well now, Janesville and Beloit and Rockford, are they all in what you call the Illinois Freight Association territory?

The Witness: Yes, sir.

Mr. Morgan: What association is that, Mr. Examiner?

Mr. Zoll: Illinois Freight Association.

Exam. Trezise: Now, Mr. Vesey, go ahead.

Mr. Vesey: I would like to see if the witness and I can't get on the same basis as we started from at the beginning of my cross examination.

By Mr. Vesey:

Q. Now, as I understand, Mr. Hamilton, from your last answer, it is your opinion that the same rate level should apply in the affected territory as in the compared territory, is that correct?

A. That isn't what I said.

Q. I say, is that your opinion?

A. Well, I don't think that I can put it down in a few words, that they ought to be exactly on the same level.

Q. In other words, you wouldn't say they ought to be exactly on the same level. You would make a differentiation, would you?

Exam. Trezise: Did you show these representative points for the purpose of showing that they should take the same level as the other rates in this compared territory, or did you show these representative points in order to give the [fol. 150] Commission a guide as to the measure of a reasonable interstate rate by which the intrastate rate might be measured?

The Witness: The second question, the answer to that is, yes; not to the first one.

Exam. Trezise: We will rely on the second question and answer then.

By Mr. Vesey:

Q. Then, Mr. Hamilton, let us approach it from another angle. You are familiar with the rates from southern Illi-

nois groups to both the affected territory and compared territory, are you not?

A. Yes.

Q. And the proposed rates to the affected territory are on a lower level from southern Illinois, than the existing rates to the compared territory, are they not?

A. They are.

Q. Is it your opinion that the proposed rates by the carriers to the affected territory, if permitted to go into effect, would constitute a reasonable fair level of rates to that territory?

A. As I have previously stated, we are not attempting to put the rates on a special level. We are trying to comply with an order of the Commission and to do so——

Mr. Vesey: Just a minute. Mr. Examiner, I am going to insist on answers to my questions. I have asked a simple question here and I would like to get a simple direct answer [fol. 151] to it. Now, it seems to me, in the interest of keeping an orderly record, I am entitled to that.

Exam. Trezise: Do you think now, Mr. Hamilton, that the rate that you propose to Rockford from the Illinois groups, we will say, does represent what is a reasonable rate, and in your mind is the measure of a reasonable rate?

The Witness: Yes, sir.

By Mr. Vesey:

Q. And is that also true to the other destinations in the affected territory, besides Rockford?

A. Is your question to the effect that the rates that we have proposed are reasonable rates?

Q. That is right, yes.

A. Yes.

Q. Now then, if those rates result in a lower level of rates to the affected territory than exist at the present time to the compared territory in southern Wisconsin, is the relationship that would then result between those two levels a proper relationship, let us say in so far as the movement of coal from southern Illinois to those two territories is concerned?

A. It is not for me to say whether that is a proper relationship.

Q. I am asking——

A. Just a minute. I am only answering you. If you want to ask a question, let me answer it.

Q. I am asking only for your opinion, Mr. Hamilton, and [fol. 152] for nothing else.

Exam. Trezise: Have you given your answer?

The Witness: No, sir, he didn't let me.

Exam. Trezise: Well, you are entitled to give your answer and complete your answer. Have you completed it?

The Witness: No, sir.

Exam. Trezise: Well then, complete your answer.

The Witness: All right. May I ask if he wants yes or no?

Exam. Trezise: He didn't ask you that. That is a different question.

The Witness: I haven't answered it yes or no. Would you read that question back, please.

(Question read.)

The Witness: The question of a relationship is not what we are trying to adjust here at this time. The rates are, in my opinion, reasonable, and they are not higher than they are to the territory beyond. The proposed rates do not bring them up to the same level as the rates to the Wisconsin territory.

Mr. Vesey: In other words, your answer is, yes.

Mr. Biaett: No, the answer is not "yes" as he stated it.

Mr. Vesey: Now, just a minute, Mr. Biaett.

Exam. Trezise: Now, the Examiner believes the answer would be "yes" if what he said is true, is that right, and [fol. 153] you said it wasn't so, as the Examiner understood it. You said the level of rates to these compared points was not lower than the rates to this affected territory. That is what you said.

The Witness: Yes, sir, I said that.

By Mr. Vesey:

Q. You mean by that answer, Mr. Hamilton, to say that the level of the rates which would result in the putting into effect of your proposed rates to this affected territory would not result in a lower level of rates than those that now apply to the southern Wisconsin compared territory?

A. No, that was not the answer at all. You got that just turned around.

Q. Now then, get back to my question. Assuming your proposed rates go into effect and it does result in a lower level of rates to the northern Illinois territory as compared with the southern Wisconsin territory, are those two levels compatible and a proper relationship, than exist in so far as the movement of coal say from southern Illinois is concerned to those two territories, in your opinion?

A. Well, I have answered that already. The rates today are on a lower level. The proposed rates would still be on a lower level. And we are not trying to adjust the rates into this territory. W are simply trying to comply with the order of the Commission.

[fol. 154] Q. All right, put it your way. Would that result in a proper relationship of the rates between the two territories, in your opinion?

Mr. Zoll: Mr. Vesey, I want to help you. Can you put that in the negative?

Mr. Vesey: No, I would rather get an answer to it this way.

The Witness: All right, I will answer it. I will say they could still be higher.

By Mr. Vesey:

Q. You mean they should be higher?

Mr. Zoll: He said "could".

Mr. Vesey: I know that. Should they be higher?

Mr. Biaett: I don't think that question is involved in the proceeding. He said they could be higher and still be on a lower level than the rates into the compared territory. The fact that they should be or shouldn't be is not in issue. We have only raised them up so far. If we might be able to raise them higher and prove to the Commission that they should be higher, why, that is an issue that would come up in that proceeding, if it ever came up.

Exam. Trezise: Well, Mr. Biaett, I think there possibly the Commission could be guided by some of this expert testimony in determining whether the level of the rates in Illinois should be relatively lower than the level of interstate rates. So the testimony of the nature of the question asked [fol. 155] might help the Commission.

Mr. Biaett: I was not under the impression that that question had been asked, Mr. Examiner.

Exam. Trezise: Well, are you satisfied to let any question that may be pending answered now on the theory that the Examiner has asked this particular? Do you know of any reason, Mr. Hamilton, why the level of rates, if it is or isn't, one way or the other, higher or lower in the State of Illinois, should be different from the level of rates on the interstate traffic to points just over the state line into Wisconsin? Do you know of any reason, I ask you?

The Witness: No, sir, I do not.

By Mr. Vesey:

Q. In other words, then, Mr. Hamilton, the mere existence of a state line should have nothing to do in so far as determining a proper rate base for determining rate levels from any origin group to a given territory, isn't that your answer?

A. My answer is that, in my opinion, the fact that the state line is between those points does not affect what would be a proper level of rates to points both north and south of that line.

Q. Certainly. Now, in this given case, your proposed rates result in a given level to the northern Illinois territory, and your existing rates result in another level to the southern Wisconsin territory, isn't that true?

[fol. 156] A. That is right.

Q. Now, I am asking you, looking at those two levels, would you say that in the territory, taking in that whole group, the affected and the compared, that that would result in a proper relationship of rates between the destinations in the compared territory and the destinations in the northern Illinois territory?

A. Well, I will not say as to the proper relationship. We could still increase those rates and they would then be less than the rates in Wisconsin. We are not trying to make a readjustment.

Exam. Trezise: Well, you think then that the Commission might well have said that the relationship between Rockford and Beloit could have been less than 15 cents, that is that you are saying?

The Witness: No, sir.

Exam. Trezise: Well then, you think that the Commission was right, then, in the 15 cents—or, you don't need to answer that.

Mr. Biaett: Mr. Examiner, I think in line with the issues in this proceeding, the witness might be permitted to state the question and the answer in the negative, that is, that this would not be an improper relationship. When you pin him down to a proper relationship, that isn't particularly involved. If these rates might reasonably be [fol. 157] higher, and he stated that they can, he might put it that way and satisfy Mr. Vesey, by saying it would not be improper.

Mr. Vesey: I think we got my first proposition established. Now I will go to yours, if you want me to.

By Mr. Vesey:

Q. Mr. Hamilton, would the level of rates that would then result in the affected territory, which is the northern Illinois territory, and the compared territory in southern Wisconsin, from these proposals, result in levels which are not improperly related one to the other?

Mr. Zoll: You mean not improperly?

Mr. Vesey: That is his own wording. I don't know whether he wants the question or not, but I am asking it.

Exam. Trezise: Do you have an answer to that, Mr. Hamilton?

The Witness: Oh, I am sorry. I will have to ask you to read that question again.

Exam. Trezise: Well, the Examiner thinks what Mr. Vesey means is that this adjustment proposed is some place within the realm of propriety, either at the top or the bottom of it somewhere.

Mr. Vesey: That is right.

Exam. Trezise: You don't need to put your finger on it exactly as being here or there, but there is a zone of propriety and it may be at the top of it or it may be at the bottom of it or it may be in the middle, but whatever it [fol. 158] is, it still can be characterized as proper.

Mr. Vesey: I put it that broadly, if the Examiner please, so I wouldn't be too specific.

Exam. Trezise: You don't want to go that far, Mr. Vesey?

Mr. Vesey: I am going that far.

The Witness: I think that the adjustment that is proposed is proper.

By Mr. Vesey:

Q. You think the adjustment that is proposed is proper, is that right?

Mr. Kaier: Of course, the Examiner has just defined "proper".

Mr. Vesey: I see. All right, you think it is proper?

The Witness: Yes.

Exam. Trezise: Within the definition of "proper" as given by the Examiner.

I think we are working the little lady too hard here. Let us take a recess.

(A short recess was taken.)

Exam. Trezise: All right, Mr. Vesey:

By Mr. Vesey:

Q. Now, as I understand it, Mr. Hamilton, in arriving at the proposed rates there was a certain committee that functioned and among the membership of that committee was yourself, is that correct?

A. Yes, sir.

Q. And who were the other members of that committee? [fol. 159] A. The Committee as a whole was the membership of the Illinois-Indiana Coal and Coke Committee.

Q. You mean by that, a representative of each of the roads was represented in that committee meeting?

A. Yes, sir.

Q. Can you tell us whether or not the view which you just expressed to the Examiner before the recess with respect to the propriety of the proposed rates which are now under suspension to this affected territory is shared by the other members of that committee?

A. Yes, sir, the propriety of the rates that we proposed was approved by that committee.

Q. So that when you say these rates are proper in your opinion, that would mean they are proper in the view of the other members of that committee?

A. I am not putting them in the shape that they are proper. What I said was that these rates, the present rates are lower than they are to the territory beyond, and were required by the Commission to make an adjustment in the rates to Beloit, Wisconsin, and the rates which we have proposed, which are now under suspension, are still on a

lower basis than the rates into southern Wisconsin, and therefore, they are not improper, they are not unreasonable, and they are not improper.

Q. In other words, they are as good rates as your commit-[fol. 160] tee could propose in view of all the circumstances involved?

A. That is the idea.

Q. And you know of no reason at the present time for considering those rates in any way improper, do you?

A. Well, I have previously stated that we are not trying to readjust rates at this time. We are simply trying to comply with the order of the Commission involving the Beloit rates. There are adjustments that we might make if we thought it was a proper time to do so.

Q. Well, you don't mean by that answer, do you, Mr. Hamilton, to say that you think that any of the rates which you have proposed to the affected territory are improper rates?

A. No, sir. I do not think they are improper rates.

Q. And so far as you know, they are proper rates, isn't that right?

Mr. Blaett: Mr. Examiner, don't you think we have had enough argument over proper and improper in one day's work in a proceeding? The witness stated his position very clearly.

Mr. Vesey: I don't see any objection to getting that answer.

Mr. Blaett: He stated his position. I don't know why that doesn't satisfy you.

Exam. Trezise: Well, you state they are proper rates. Now, let us drop that. That is the same definition as the Examiner gave. Will you accept that?

[fols. 161-162] Mr. Vesey: I will accept that.

Mr. Kaier: Well, he has answered that.

Exam. Trezise: You have answered that the rates to this affected territory are proper. Did you say that, or do you want to modify any answer that you have made before? I think you have answered it three times.

The Witness: I answered your question, that I considered them proper.

By Mr. Vesey:

Q. Well now, just so I am straight—I don't know whether there is a technicality involved in that or not—but just in the common, ordinary use of the word "proper" in the English language, are the rates which you propose to this affected territory proper rates, in your opinion?

. . . . . .

[fol. 163] Exam. Trezise: Is there any other answer that you want to give, or qualify the "proper" that you have already answered, that the rates were proper?

The Witness: No, sir.

Exam. Trezise: He has no other one. All right. Let us take up something besides the propriety of those rates.

By Mr. Vesey:

Q. Now, I notice in your testimony, Mr. Hamilton, that the scale that you referred to for the purposes of your [fol. 164] rate comparisons was the Holmes & Hallowell Scale. Did you make any computations to determine levels under any other scales, as, for example, Midland Electric Scale or the scales in Docket 23922?

A. No, sir, I did not.

Q. Your studies were all confined to the use of the Holmes & Hallowell Scale?

A. That is right.

Q. In your further deliberations with your committee, did you give any consideration to the possibility that the rates which you are now proposing might result in diverting coal shipments from one origin group to another?

Mr. Zoll: You mean between the origin groups in this territory? You don't have in mind the eastern field?

Mr. Vesey: No, just the origin groups involved here.

Mr. Zoll: Yes.

The Witness: There wasn't any special discussion on that subject.

By Mr. Vesey:

Q. Are we to assume that your testimony then with respect to revenue losses is predicated upon the assumption

that the same tonnages would continue to move from the same origin groups as in the base periods that you use?

A. Approximately.

Exam. Trezise: Well, did you change the relationship of rates?

[fol. 165] The Witness: No, sir.

By Mr. Vesey:

Q. In your opinion as an expert, Mr. Hamilton, do you have any reason to believe that the changing in the levels as proposed in your proposed rates would result in a shifting of tonnages from one origin group to another?

A. No. I know of no reason why it should. Of course, from year to year tonnage does shift from one group to another, because some operator goes out and gets a contract that somebody else had the year before. But so far as the proposed rates are concerned, I don't consider that they would cause that.

Q. You know, do you not, that there is very keen competition between coal producers in the several origin groups in Indiana and Illinois, in the sale of their coals in the territory, into the affected territory and the compared territory, do you not?

A. Yes.

Q. Do you know what is the breaking point ordinarily, in so far as price per ton is concerned, which causes a shift, buyers preferring one coal, that is, from one origin group as against the coal from another origin group?

Mr. Biaett: I object to that question, Mr. Examiner. The quality of coal or the price regulation has no part in these proceedings. We are merely talking about the level of the rates and whether the level of the rates discriminates [fol. 166] against interstate commerce.

Mr. Vesey: I concede that. I think everybody does, Mr. Biaett. This question is very simple and direct. When you change your rates, you change the delivered price, naturally, of coal. Now, let us find out whether he gave any consideration in the statement he made in his direct testimony, that there would not be any diversion from one origin group to another.

Exam. Trezise: I will let him answer that question, but don't pursue it too far, please.

The Witness: No, I couldn't tell you just what the breaking point is, as to whether an operator in one district would take business away from an operator in another district.

By Mr. Vesey:

Q. And your committee didn't give any consideration to that particular aspect of the problem involved, did they?

A. We are not selling coal. We have to comply with an order of the Commission.

Q. I say, You didn't give any consideration to that aspect of the problem involved?

Exam. Trezise: He said he didn't; isn't that right?

The Witness: That is right, I said I didn't.

By Mr. Vesey:

Q. You spoke of an investigation which was made under your direction with respect to determining the effect of the increased rates in so far as the competition between coal [fol. 167] and gas and fuel oil is concerned. Will you please tell me when that investigation was made?

A. Within the last month.

Q. And who made it?

A. One of our representatives.

Q. And his name is what?

A. Well, the investigation was not confined alone to one party.

Q. All right, give the names of the parties, please.

Mr. Zoll: Might I ask the purpose of that question?

Mr. Vesey: Yes. So that I may understand the direct testimony that you put in with respect to competition between gas and fuel oil and coal.

Mr. Zoll: Their names don't help you to understand that testimony, you know that.

Mr. Vesey: Now, if the Examiner please, just a moment; the direct testimony is in here. He says an investigation was made. He said first it was made by one representative. Now he said it is more than one. Let us have the names of the parties.

Mr. Zoll: I object to the question because I don't see how their names, whether Smith or Jones, could help that testimony or help you understand that testimony.

Mr. Vesey: I may want to call Smith or Jones.

Exam. Trezise: Let us start here. These are the men, as the Examiner understands it, who were working under your [fol. 168] direction. That is correct, Mr. Vesey?

Mr. Vesey: That is right.

Exam. Trezise: Now, Mr. Vesey would like to know whether his name is Tom, Dick or Harry. Now, I think he has a right to ask that question and he can call those men in if he wants to. Now, do you know the names of these men?

The Witness: Yes, sir, I know the names.

By Mr. Vesey:

Q. All right, what are they?
A. One of them is Dewey Woolin.
Q. How do you spell that?
A. W-o-o-l-i-n. The other one is Richmond.
Q. His first name, please?
A. For the moment——

Mr. Zoll: L. E.
The Witness: L. E. Richmond.

By Mr. Vesey:

Q. Were there any others?
A. No.
Q. When did you give them their directions with respect to this investigation which was made under your supervision and direction?

Mr. Zoll: Right there I want to avoid the impression being created that Mr. Hamilton's testimony springs entirely from the investigation of two men. He testified that his knowledge and his testimony on the subject came from his years of experience on the railroad. He testified that he [fol. 169] has men in all territories. A railroad is a big organization and you can't confine the work to one or two men.

Exam. Trezise: All right. He has asked about these two men. The evidence is pretty clear on it.

Mr. Vesey: Why, yes. I don't think there is any question about it.

Exam. Trezise: All right, proceed.

By Mr. Vesey:

Q. Now, when did you give your directions with respect to the investigation that was made?

A. Well, I don't remember the exact date that I handled it with them.

Q. You mean that was approximately a month ago, as you said a moment ago?

A. Yes, it was within the last month, about a month, within the last month.

Q. In other words, some time on or about the 18th day of February?

A. Well, I won't set a time.

Q. I mean some time?

A. I said I had it up within about a month.

Q. Now, what were your directions to those two investigators?

A. To determine whether or not natural gas was available in this territory.

Q. Yes. What else?

A. To what extent it was being used.

[fol. 170] Q. Yes; any other directions?

A. Those were the principal directions I gave them.

Q. Now, they reported back to you, I take it?

A. They did.

Q. When did they report back?

Mr. Zoll: Between that time and the present time.

Mr. Vesey: Now, just a minute, counsel. We have a witness on the stand here. I don't think the witness needs prompting.

The Witness: Well, I can't give you the exact date.

By Mr. Vesey:

Q. Well, approximately when?

A. Within the last 30 days.

Q. You mean they reported to you before you gave your directions or after?

A. Well, afterwards. They couldn't very well report before I asked them about it.

Mr. Vesey: It would seem to me that.

Mr. Kaier: You don't understand, Al, Mr. Vesey comes from Washington.

Mr. Vesey: I take it that that remark is made to put me in the same category as the Examiner.

Exam. Trezise: Let us not discuss it. Ask the man the questions. We will have to start and be a little more strict about this promiscuous speaking. You are not supposed to talk to each other anyway.

[fol. 171] Mr. Vesey: I was just trying to find out the purpose of the remark.

By Mr. Vesey:

Q. Now, Mr. Hamilton, when did they report back to you, these two investigators?

A. I said I couldn't give you the exact date. It was within the last 30 days.

Q. Was that a written report?

A. Part of it was written and part of it was oral.

Q. Do you have that written report available here?

A. No, it isn't available at present.

Q. Will you obtain it and produce it?

Mr. Zoll: No, I will object to producing it.

Exam. Trezise: You say you object?

Mr. Zoll: I will be glad to show it to Mr. Vesey.

Mr. Vesey That will suffice, if the Examiner please.

Exam. Trezise: The part that is going to be produced is the part that is written, not the oral part.

Mr. Vesey: If he will show it to me, so that I may have it before this witness is finally excused from the stand, that will suffice for the time.

Exam. Trezise: All right, proceed to the next question.

By Mr. Vesey:

Q. Now, was it on the basis of those written and oral reports that you made the statements, that you arrived at conclusions which served as a basis for your statements that appear on pages 15, 16 and 17 of your prepared state-
[fol. 172] ment?

A. Partially so, and partly on account of the experience we have had in competition of natural gas at other points on the line.

Q. Does your railroad, the Illinois Central, maintain at any destination so-called gas compelled rates?

A. Yes, sir.

Q. Why do you have gas compelled rates on your railroad, Mr. Hamilton, in view of the statements which were made on pages 15, 16 and 17 of your prepared statement?

A. Well, we put the rates in with the expectation that it was going to keep tonnage on the railroad, but our views as to the propriety of doing that have considerably changed since they were originally published, and they have not accomplished what we expected.

Q. In other words, your views at the time you put those rates in had changed from the views as expressed in your statement which you read here yesterday?

A. No, sir. Our views as to the result of putting in those rates have changed.

Q. You mean as to the expected results?

A. Yes.

Q. In other words, you didn't save as much coal tonnage as you thought you would, is that it?

A. Yes, sir.

[fol. 173] Q. But do you still adhere to your previous view that there was a necessity for the maintenance of those gas compelled rates?

A. I hadn't previously expressed any opinion as to the necessity of establishing the rates. I said we thought the establishment of the rates would result in continuing the tonnage to the railroads, but it did not accomplish what we thought it would.

Q. But those rates are maintained, are they not, because of the competition of coal as against gas, isn't that right?

A. They are still maintained—when you once get a low rate in, it is a very difficult matter, as indicated in this hearing, to ever get it increased.

Q. In other words, I take it now, your opinion is that there is no necessity of maintaining a gas compelled rate into any territory, is that right?

A. There might be some exception, but generally speaking, that is correct.

Q. And that is the point of view that you have tried to express in pages 15, 16 and 17?

A. Yes, I have tried to express the view that because of the experience we have had at other points, that a small increase in the freight rate is not going to be the determining factor in turning business from the railroads to the gas, natural gas lines.

[fol. 174] Q. In other words, to talk of competition between gas and coal is to talk of the unreal and the unrealistic, is that right?

A. I wouldn't put it just that way.

Q. How would you put it?

Mr. Zoll: He has already put it. I submit he has already answered that question.

Exam. Trezise: What is your answer, Mr. Hamilton? You would put it the way you put it before, and do you understand what that was, Mr. Vesey?

Mr. Vesey: Well, I think I do.

Exam. Trezise: Is that your answer?

The Witness: That is my answer, yes, sir.

By Mr. Vesey:

Q. I don't find it in your prepared statement here, although I have it marked, Mr. Hamilton, that is, that I believe in one place you pointed out that your present rates to certain points in the affected territory were maintained at that particular point because coal moving from southern Illinois moved through those towns, to destinations, on its way to Chicago, and because of the rate to Chicago it was necessary to maintain that particular rate at those destinations, is that right?

A. That is right.

Q. Do you recall that testimony?

A. Yes, I do.

Q. And those destinations were what?

[fol. 175] A. They were, I believe, DeKalb and Rochelle and several points on the North-Western Railroad between Nelson and Chicago.

Q. And as I understood your testimony there, your reason for not raising the rates at those particular points was because of the Chicago rate?

A. They were raised. They were raised 5 cents instead of being raised more than 5 cents.

Q. In that instance your comparison was with Chicago rather than with southern Wisconsin?

A. No, sir.

Q. It was not?

A. No, sir.

Q. What was it?

A. The comparison was with all of these points, and I have stated in my direct testimony that we didn't consider Chicago a proper point to use in measuring the level of the rates to this involved territory.

Q. Now, in measuring the level of rates to that territory out there, was it necessary that you use the particular route that you did from southern Illinois to Chicago, that is, I believe via the North Western?

A. Well, the North Western Railroad wants to handle some coal and that is their route.

Q. You felt it necessary to use that particular route and [fol. 176] use that as a means of holding those rates as you did in your proposal?

A. Yes, sir.

Mr. Vesey: That is all.

Exam. Trezise: Mr. Hamilton, when you spoke of the change in the flow of traffic, did you complete your understanding on that? Now, you say if the rates from all of these groups, Illinois, Indiana and Kentucky, were increased a certain amount, it might not change the flow of traffic. Well, coal comes from other places than these groups, does it not?

The Witness: Yes, it does, but the other groups that the coal comes from is eastern coal, which is a different kind of coal and the rates are higher, and I stated in there that I did not think it would result in diverting the business from Illinois, Indiana and western Kentucky to that eastern field.

By Mr. Vesey:

Q. Let me ask just one question in view of that answer. I take it, then, as far as you are concerned, Mr. Hamilton, you would rather maintain a low level of rates to the towns in question because of your rate to Chicago than you would raise that level to what you would term a proper level and take your chances with respect to diversion, is that right?

A. Well now, that question was so long that I didn't quite get it all. May I have it read?

[fol. 177] (Question read.)

The Witness: We are not trying to maintain a low level to these points. We are trying to increase the rates. And as I understand your question, do we think we should main-

tain the low level, as you call it, of the suspended rates to these points rather than increase the rates to Chicago?

By Mr. Vesey:

Q. You mean you don't understand the question?

A. That is the way I understand your question.

Q. All right, you answer it on that assumption first. Now, on the basis of that assumption, what is your answer?

A. Well, it would hardly be considered probable or proper to attempt to raise Chicago rates. We have explained before of the tonnage that is moving into Chicago and the competition from the various fields. So that we could hardly as a practical matter try to increase the rate to Chicago.

Mr. Vesey: That is all.

Exam. Trezise: All right, gentlemen. Let us adjourn until 2 o'clock.

(Witness excused.)

(At 12:30 o'clock P. M. recess taken to 2 o'clock P. M.)

[fols. 178-229] Afternoon Session

The hearing was resumed pursuant to recess.

2 o'clock P. M.

Exam. Trezise: All right, gentlemen, when you are ready we will proceed. Do you have some further questions, Mr. Vesey? I think you said you were through.

Mr. Vesey: I concluded.

Exam. Trezise: Do we have any further questions of Mr. Hamilton concerning his direct testimony?

. . . . . .

[fol. 230] Mr. Bather: I would like to ask Mr. Hamilton a few questions, Mr. Examiner.

Exam. Trezise: Mr. Bather.

By Mr. Bather:

Q. In your direct testimony, Mr. Hamilton, referring to the decisions of the Illinois Commerce Commission in the Rockford and Freeport coal cases, Dockets 13569 and

13558, effective August 20, 1930, the rate at that time was reduced generally 17 cents a ton, is that correct?

A. That is correct.

Q. Subsequent to that reduction, in ex parte 115, an increase of 10 cents per ton was made; and in ex parte 148, an additional increase of 5 cents per ton.

A. Yes, sir.

Q. That is correct?

A. That is correct.

Q. So that since 1930, the rates from Illinois producing points to Rockford, Freeport and generally in the territory [fol. 231] in northern Illinois have been restored to the extent of 15 cents per ton?

A. Not restored. The rates to those points, as well as all other points, have been increased by these general orders No. 115 and 148, and it does not make any readjustment as you intimate in the rates to Rockford and Freeport.

Q. But nevertheless you earned 15 cents per ton more than you did under the rates prescribed by the Illinois Commerce Commission, to which I referred?

A. Yes, and those increased rates have been approved by both Commissions.

Q. And they were opposed by the shippers generally, were they?

A. I think not.

Q. Now, in computing your comparisons in the rates from Illinois to Rockford, for example, with the Holmes & Hallowell scale you used the average short tariff routes as a basis for your distance, did you not?

A. That is correct.

Q. Now, are the rates under the Holmes & Hallowell scale based upon the shortest route from point of origin to destination?

A. My recollection is that that scale was based on using mileage of not exceeding more than three lines.

By Exam. Trezise:

Q. The shortest route?

A. Yes.

By Mr. Bather:

Q. Where you had physical connection between those [fol. 232] three or whatever number of lines were involved?

A. I believe that that is the method that was used. I wouldn't state it definitely as a fact because I haven't read that for some time.

Q. Well, assuming that that is true, would that make any difference in the comparisons as to the percentage of the Holmes & Hallowell scale that the present rates bear to that scale within the State of Illinois?

A. It might make some differences both ways. We have used—some of these average short tariff routes in some cases are over more than three roads; some are less than three roads.

Q. Taking the distance from Herrin, Illinois, for example, to Rockford, your short tariff route there would be via the Illinois Central, Mendota and the Milwaukee. Would that be a fair distance to use in measuring the rate from Herrin to Rockford or do you take the average of the longer routes via the C. B. & Q. and the Missouri Pacific?

A. We think that the proper method of arriving at the distances is to use the average short tariff route distance, that is the shortest route over each origin line

Q. You made some reference to the rates on coal from southern Illinois to Dubuque, Iowa, and other Mississippi River points. Is there a movement of coal from southern Illinois to Dubuque, Iowa, via rail to East St. Louis or Alton and barge up the Mississippi River from those points?

[fol. 233] A. There may be some movement there to Dubuque, yes. I believe there is a movement by barge.

Q. Is it a fact that some time ago your line and other railroads sought to establish a rate from southern Illinois to Dubuque, Iowa, to meet that rail and water competition?

A. That is correct.

Q. And you asked the Commission for 4th Section relief?

A. We did.

Q. What rate did you propose in that case to Dubuque?

A. I believe there was a reduction of 30 cents a ton, and the present rate to Dubuque from southern Illinois on fine coal is $2.45.

Q. But you did ask for a reduction to meet that competitive situation?

A. Yes, but that is—that application is withdrawn for the duration.

Q. That application has been withdrawn?

A. Yes, sir.

Q. But you nevertheless did seek to have that rate established, and did you not state at the time that that was a compensatory rate for the service involved in the transportation of coal from southern Illinois to Dubuque?

A. I don't recall just the information that was given in every 4th Section application.

Q. You testified in that case, didn't you?

[fol. 234] A. No, sir.

Q. Now, in Exhibit No. 2, I want to go back again to the village of Apple River. That is a local point on the Illinois Central Railroad, isn't it?

A. It is.

Q. It is a rural community?

A. It is a small town.

Q. A small town?

A. Yes, sir.

Q. Is there any manufacturing industry located there, at Apple River?

A. Not that I know of.

Q. Is there any competition between anyone in Apple River and anyone in Rockford in so far as manufactured products are concerned?

A. I don't know of any.

Q. Do you know what the population of Apple River is?

A. Oh, I think it is——

Mr. Zoll: He has already answered that.

The Witness: I think it is about a thousand. It is a small town. I stated that before.

By Mr. Bather:

Q. I would like to know definitely why you picked Apple River as a point of comparison with the rates from Illinois mines to Rockford and Freeport.

A. Apple River——

[fol. 235] Q. In other words, what probative value has that comparison in this case?

A. Apple River was taken as one of the comparative points because it is located practically half way between Freeport and Dubuque; and what we were trying to show in this case is that the rates to the involved territory were on a lowel level than the rates to the surrounding territory, and if the rate is a proper rate at Apple River and

Dubuque and Janesville and these other points, then the rates that we propose to the destinations in northern Illinois, which are now under suspension, which are on a lower level, are not unreasonable rates.

Q. Well, couldn't the converse be true that possibly the rate to Apple River is too high as compared with the rates to Rockford and Freeport?

A. The Commission has already called attention to this low spot here around Rockford and Freeport.

Q. Was that before or after the increases of 15 cents were made?

A. That was before the ex parte 115 and 148 increases were made, but those increases have been approved by both commissions.

Q. Nevertheless, the consumer of the coal has to pay the 15 cents?

A. Obviously.

Q. You state that the rates to Chicago are far below a [fol. 236] maximum reasonable level due to intensive competitive situations. Now, what competition exists between the coal shipped from Illinois, Indiana and western Kentucky to Chicago as compared with Rockford, from other sources from which coal is shipped?

A. The situation at Chicago is different from that at Rockford because of the many railroads serving this and the coal, for various purposes, that is drawn from the various territories, both all rail and by rail and lake. The fact that there are so many railroads serving these different origins that converge at Chicago.

Q. It is your contention, then, as I understand it, that there is an intensive competitive situation in coal from the inner and outer crescents as compared with the coal shipped into Chicago from Illinois, Indiana and western Kentucky?

A. Yes.

Q. To what extent are the inner and outer crescent coals from eastern producing points to Chicago or Rockford used for industrial purposes?

A. To Rockford?

Q. Either Rockford or Chicago.

A. Well, the gas company at Rockford uses some eastern coal.

Q. And do you know what that amounts to, Mr. Hamilton?

A. No, I haven't the figures on that.

Q. Do you know what the tonnage of coal from Illinois, Indiana and western Kentucky to Rockford is, for that [fol. 237] shown in the exhibit, approximately 550,000 tons. Do you call that a substantial movement of coal?

A. Yes, that is a substantial movement.

Q. In your testimony, you show that the increased revenue which would be derived from the increases here proposed for the seven destinations in the suspended territory would amount to $104,515.20, as compared with a prospective loss of $21,142 to the points in southern Wisconsin with which comparisons are made.

Mr. Zoll: That is just Beloit.

Mr. Bather: No, it doesn't say that. That is right, to Beloit.

By Mr. Bather:

Q. Now, as I understand it, in order to preserve your revenue at Beloit by maintaining the present rates to that point, you propose to inflict an additional burden of $104,515 on the territory in northern Illinois. Do you consider that a fair way to correct the situation under the order of the Interstate Commerce Commission in the Fairbanks-Morse case?

A. We don't intend to inflict anything on Rockford and Freeport. They have been on a basis below par for a good many years.

Q. And you do not agree with the conclusions of the Illinois Commerce Commission as to the unreasonableness of the rates that they established in the Freeport and Rockford cases?

[fol. 238] A. No, sir. If we did, we wouldn't have started the 13th Section case.

Q. Getting back to that, it is not quite clear to me just what the undue discrimination is between the present intrastate rates and the interstate rates. In other words, in what manner do the present rates discriminate against interstate commerce and to what points?

A. In my direct testimony, I showed the extent of the intrastate movement to these representative points and how much revenue we are being deprived of in the movement of intrastate traffic to those points, and also the amount of additional revenue that we would receive from the handling

of interstate traffic if the state rates were brought up to the basis which we propose.

Q. In other words, as I get it, then, the prime factor in discrimination under your 13th Section allegations is that it is necessary to raise the Illinois intrastate rates in order to enable you to make increases in the interstate rates, not only from Illinois mines moving via interstate routes to Rockford, Freeport and other points but also from Indiana and western Kentucky.

Mr. Zoll: I wonder if we could have that question read again, please, Miss Reporter?

(Question read.)

The Witness: That is one factor that makes it necessary [fol. 239] to increase those rates.

By Mr. Bather:

Q. And was that the primary basis upon which the 13th Section application was filed?

A. Well, I——

Mr. Zoll: I submit that is not a proper question of this witness, who has been asked to give facts about which he has testified.

Mr. Bather: Well, Mr. Examiner, he has testified about these things——

Exam. Trezise: He has something to do with the formulating of these rates and the way he would publish them, whether he would increase one or reduce the other. He can answer that.

Mr. Kaier: The question was, why was the petition filed, what was the principal reason for filing the 13th Section petition.

Mr. Bather: Yes, I want to know why it was filed and the basis upon which discrimination was alleged.

Mr. Kaier: I submit, the petition speaks for itself.

Exam. Trezise: That is another question. I don't know whether Mr. Hamilton had anything to do with that.

Mr. Bather: Well, he can, Mr. Examiner, in my judgment

By Exam. Trezise:

Q. Did you have anything to do with that; did you help formulate that petition? Do you know of any reason why it was written, prepared and sent to the Commission? [fol. 240] What do you know about that?

Mr. Zoll: Of course, he has already testified about exactly why it was filed.

The Witness: I had nothing to do with preparing the petition, but the reasons for filing the petition were that the rates that we had published to comply with the orders of the Interstate Commerce Commission in Docket 25419 were suspended by the Illinois Commission.

By Mr. Bather:

Q. And that was primarily the reason for the filing of the 13th Section petition with the interstate Commerce Commission, because of the fact that the Illinois Commission suspended the rates that you proposed to increase?

A. That is correct. We tried to comply with the Interstate Commission's order, and when we proposed the rates; they were suspended. That is the reason that the 13th Section petition was filed.

Q. Now, in your previous testimony you made some comment about natural gas pipe line serving the industrial district in the southeast part of Rockford. Do you know if natural gas is used by any of the industries in Rockford?

A. I understand that natural gas is used for certain purposes by some of the industries in Rockford.

Q. Do you know to what extent that is true?

A. Well, I understand that it is to the extent that they were using manufactured gas before the natural gas came in there.

[fol. 241] Q. Do you know whether or not that natural gas is used in and of itself, or is it a mixture of manufactured gas and natural gas?

A. Well, it is delivered through the gas company's lines that manufactures the gas, and it may be mixed.

Q. Now, you further stated that the gas company, when it thinks it is necessary, will induce consumers to use gas and convert their plant from coal to gas, regardless of the delivered cost of the coal. To what extent is that true?

A. Are you talking now about these industries at Rockford?

Q. Anywhere. I don't care where it is. Converting of any plant, any industry, from coal to gas.

A. In connection with that, I spoke of the experience we had had at other points.

Q. Is that true at Rockford and Freeport?

A. It is my understanding that there is no natural gas used at Freeport but that at Rockford, the plants are not being operated for power with the gas, but gas is being used for the purposes that the manufactured gas was used and to that extent.

Q. I believe you testified that you didn't know the relative cost of gas as compared with the cost of coal to produce a hundred pounds of steam, for example.

A. I don't think that exact question was asked me, but I can't give you the figure.

[fol. 242] Q. You can't give us that?

A. No, sir.

Q. You do know, though, that a public utility supplying gas cannot make any charge it wants to, without the authority of the Illinois Commerce Commission?

Mr. Kaier: I object, if the Examiner please, on the ground it is a question of law.

Exam. Trezise: Oh, I think we will let him answer.

Mr. Bather: I don't think it is a question of law; it is a question of fact.

Mr. Kaier: The whole thing, Mr. Examiner, this witness couldn't answer that question unless he knew whether the Illinois Commerce Commission had been given jurisdiction, that it had been given a minimum rate power and a maximum rate power over gas rates.

Mr. Bather: Let me call your attention to Mr. Hamilton's direct evidence, in which he states, "When a gas company seeks an outlet to take care of its surplus capacity while it is developing sufficient domestic outlets to take care of its entire supply of gas, the result is that to large manufacturing institutions the gas company usually makes any price that is necessary to get them to convert the plant from coal to gas."

By Mr. Bather:

Q. Now, from what do you draw such a conclusion, Mr. Hamilton?

[fol. 243] A. I drew that conclusion from the experiences

that we had had in connection with the natural gas entering other points in competition with coal.

Q. What points are they? Particularly, is East St. Louis one?

A. Oh, Iowa, East St. Louis, Memphis, various points.

Q. Now, do you know to what extent fuel oil is used in the industries of Rockford or Freeport in the manufacture of their products?

A. No, I do not.

Q. Do you know if any of the industries have converted their plants from fuel oil to coal during the past several years?

A. No, I haven't any specific information at this time.

Mr. Bather: I think that is all, Mr. Examiner.

Mr. Cardy: I would like to ask Mr. Hamilton some questions, please, Mr. Examiner.

Exam. Trezise: All right, Mr. Cardy.

Mr. Cardy: I would just like to ask a few questions to clear up some of these points for further examination of the exhibits.

Exam. Trezise: All right.

By Mr. Cardy:

Q. Now, Mr. Hamilton, as I understand it, this proceeding is really brought about by the order in tl Fairbanks Morse case, the 13th Section proceeding.

A. That is what I have stated.

Q. That order, as I understand it, was directed at [fol. 244] Rockford and the adjustment to Beloit and Rockford and named an increase of 15 cents in the rate to Rockford—an increase in the rate to Rockford of 15 cents?

A. Either that or a reduction of 15 cents to Beloit.

Q. You could have complied with that order by merely increasing the rate to Rockford, could you not, 15 cents?

A. We could hardly get away with a thing like that, Mr. Cardy.

Q. That would have been in strict compliance with the order and you wouldn't have been in violation?

A. We couldn't increase Rockford alone without increasing some other place.

Q. I mean under the terms of the order; under the terms of the order

A. It would have created 4th Section departures which could not be done.

Q. Now, do you know about how many points of destination you increased in northern Illinois in this proceeding?

Mr. Vesey: Just a minute, before that is answered, could I have that last question read back, please?

(Record read.)

The Witness: Instead of 4th Section departures, I might say departures from the long and short haul rule.

By Mr. Kaier:

Q. Long and short haul of the Illinois law?
A. Yes.

Mr. Vesey: If the Examiner please, I would like to get [fol. 245] the answer straight. I got one answer coming from someone over here. I don't know whether it is the witness or not. I wonder if I could get the whole answer read back again?

The Witness: The answer is to increase the rate to Rockford alone without changing any other points.

By Mr. McElroy:

Q. On that point, Mr. Hamilton, did the carriers file an application with the Illinois Commerce Commission seeking authority to depart from the long and short haul section of the Illinois Act?

A. You say did we?

Mr. Cardy: Could they?

By Mr. McElroy:

Q. My question was, did they?
A. No.

Mr. McElroy: All right, thank you.

By Mr. Cardy:

Q. Now, how many points of destination did you actually increase in the northern Illinois territory?

A. Why, I haven't counted the points, Mr. Cardy.

Q. Will you take my word for it that the non-agency stations, you have increased about 350 destinations?

A. I think that is exaggerated.

Mr. Cardy: I will check it over.

Mr. Vesey: I can't hear, if the Examiner please, the questions asked, so I can't follow it.

Exam. Trezise: Will you just come up here a little closer, please, Mr. Cardy.

[fol. 246] Mr. Cardy: Yes, sir.

By Mr. Cardy:

Q. Now, the Sandusky case and the Rockford case, which required a reduction in the rates to Rockford, Freeport and Dixon of 17 cents a ton, heard about ten years ago, those were the only points of destination involved in the 13th Section case before the Interstate Commerce Commission decided in March of 1932, is that not true?

A. No, sir.

Q. What other points were involved there?

A. Well, practically the same territory—

Q. I mean where relief was not granted. Of course, there were a lot of other orders involved; but the only orders dealing with northern Illinois where you did not obtain relief in the Rockford case, Rockford, Freeport and Dixon cases, is that not true?

A. Well, your question is a little involved. I don't understand exactly what it is.

Q. Well, let me ask you this: It is a fact that the Illinois Commission reduced the rates to Rockford, Freeport and Dixon 17 cents a ton?

A. No, they did not reduce the rates to Dixon 17 cents. They reduced them 14 cents.

Q. But 17 cents to Rockford and Freeport?

A. That is right.

Q. Now, following that reduction, isn't it a fact that the [fol. 247] Milwaukee Railroad, from mines on its lines in Indiana, from the Linton district, reduced its rates exactly 17 cents a ton to Rockford?

A. They did; subsequently reduced the rate.

Q. Has that relationship been restored in this proceeding, so far as the points of origin are concerned?

Exam. Trezise: You mean do they propose to restore it?

Mr. Cardy: Yes.

Exam. Trezise: In this proceeding?

Mr. Cardy: Yes, that is right.

The Witness: In this proceeding we propose to continue the present relationship.

By Mr. Cardy:

Q. To the points of origin that existed prior to the reduction of 17 cents a ton to Rockford?

A. We propose to continue the relationship that is in effect now.

Q. But that is different than the adjustment which was in effect prior to the reduction of 17 cents a ton to Rockford, is it not? It is just 17 cents different? In other words, Mr. Hamilton, you know what I am talking about. You know that certain mines in the Linton district in Indiana are 17 cents lower than the mines in the same district on other roads shipping to Rockford, is that not true?

A. That is correct.

Q. Now, wouldn't you think it would be proper to [fol. 248] withhold this investigation, an order in this investigation and not press it until those rates from the Milwaukee mines to Rockford be put on the proper basis and restored to the basis which existed prior to the disturbance of the rate to Rockford by the Illinois Commission?

A. The point is this, that the Milwaukee rates that were reduced were reduced by that line with the idea of restoring the relationship that was in existence prior to the reductions from Illinois. The rates from certain other railroads to Rockford had not been reduced.

Q. You have also some mines in Indiana in the Linton district. Is there any increase in those mines, that is, on the Illinois Central?

A. Is there any proposed?

Q. Yes.

A. Yes.

Q. On the same level as the other mines in Indiana, the same measure?

A. Same measure, yes; the same measure as the rates from other mines in that district.

Mr. Morgan: May I just inquire, you mean company-owned mines, Mr. Cardy?

Mr. Cardy: No, I didn't have that in mind.

Mr. Morgan: Pardon the interruption.

Mr. Cardy: That is all right.

[fol. 249] By Mr. Cardy:

Q. Now, Mr. Hamilton, in considering this adjustment, in increasing the rates, say, to Dixon 5 cents a ton, did you take into consideration disturbance of any competitive adjustment that might obtain by increasing the rate to Dixon and not increasing it to LaSalle and not increasing it to Linwood, Iowa, an interstate point?

I might add in connection with that—first, I will ask you this question: Isn't it a fact that there are cement plants located at Dixon, Linwood and LaSalle?

A. There are cement plants located at those points.

Q. Did you take into consideration a disturbance of competitive conditions that might be brought about by changing the rates to Dixon and not changing the rates to these other two points I mentioned? There are many others I could mention.

A. Well, the increase of 5 cents a ton at Dixon does not bring Dixon back to the relative basis that those three points belonged prior to the time that the Illinois Commission reduced Dixon 14 cents a ton.

Q. What is your rate to LaSalle today, southern Illinois? Isn't it $2.00?

A. No, it is some——

Q. $2.05?

A. No, I would have to look at the tariff to see exactly what it is.

Q. I understand it is the same as the rate to Dixon.

[fol. 250] A. I understand it is somewhat lower.

Q. That is my impression. But there is no increase, anyway, in the rate to LaSalle?

A. No, we didn't propose to increase LaSalle.

Q. Now, Mr. Hamilton, I get the basis that you contend the rates in Illinois are unduly low. The test of reasonableness that you use is by comparing the rates in Illinois territory, Illinois Freight Association territory, with the rate in Western Trunk Line territory moving from Duluth and Superior to points in North, South Dakota and Minnesota.

A. No.

Q. Is that not true?

A. Those rates are not compared with the rates that move from the Head of the Lakes, but steel that was prescribed——

Q. That is in the Holmes & Hallowell territory, is it not, the territory I have described?

A. Yes.

Q. Now, will you state approximately, based upon your experience——

A. You didn't let me finish my answer to your question, Mr. Cardy.

Q. All right.

A. So that the rates to these involved points were not compared to the rates from the Head of the Lakes. The only reference to the H. & H. scale was to show a comparison [fol. 251] of the rates to the involved destination territory in this proceedings with the rates to destinations in the surrounding territory.

Q. Just one more question: Can you state what the relative freight levels should be in Illinois Freight Association territory as compared with Western Trunk Line territory, where the Holmes & Hallowell scale applies? Should the Illinois Freight Association territory be about 60 to 70 or 80 per cent lower than the rates in Western Trunk Line territory?

A. I would say not.

Q. About how much, or what percentage would you say? That applies on all traffic which would fairly reflect the operating conditions.

A. I stated in my testimony here, I called reference to a statement where the Interstate Commerce Commission had said they would not order rates 80 to 87 per cent of the Holmes & Hallowell scale reduced.

Q. I am not talking about the scale; I am talking about the relative level of rates that are actually applied. Can you answer that question or can you not?

A. Well, your question is a little too deep for me.

Q. All right.

A. Maybe you can simplify it.

Q. All right. I will try to simplify it. Can you state what level of rates is generally applied in the Illinois Freight [fols. 252-255] Association territory as compared with the level of rates applied in Western Trunk Line?

A. The Interstate Commerce Commission——

Q. Well, I am asking you if you know. If you don't, say so.

Exam. Trezise: On coal?

Mr. Cardy: On coal or any other traffic. I would like it on coal if he can state, but I would rather have it on all traffic.

The Witness: Well, I understood your inquiry to be with reference to the rates from the docks. Now, if you are raising the question about the level of rates in Western Trunk Line territory, that covers a good deal of territory. The Commission has issued different orders.

By Mr. Cardy:

Q. Yes, confining it to the Holmes & Hallowell territory, where the Holmes & Hallowell scale applies.

A. I might make reference to some orders of the Commission where they have said that they have fixed rates into Illinois that approximated about 85 per cent of the Holmes & Hallowell scale. Rates were not made on the scale.

[fol. 256]

Morrison Hotel,
Chicago, Illinois,
March 22, 1943.

Met, pursuant to adjournment, at 10 o'clock A. M.

Before R. N. Trezise, Examiner, Interstate Commerce Commission; F. B. McElroy, Illinois Commerce Commission

Appearances:

As heretofore noted and the following additional:

August Gutheim, 712 Jackson Place, Washington, D. C., appearing for Western Pennsylvania Coal Traffic Bureau.

Proceedings

Exam. Trezise: All right, gentlemen, we will continue. Mr. Stadell, you had some questions you wanted to ask of Mr. Hamilton, did you not?

Mr. Stadell: Yes, I have some.

B. M. HAMILTON resumed:

Cross-examination (Cont'd).

By Mr. Stadell:

Q. Approximately how long, Mr. Hamilton, has natural gas been available at Rockford and the other northern Illinois points involved in this case?

A. I understand the line has been extended up there within the last two years.

Q. During this study that you stated was made, the [fol. 257] investigation that was made, did you determine the prices that were being charged by the natural gas company at any of these points for gas sold for either industrial or domestic uses?

A. No, I did not.

Q. Did you make any computations to determine the comparative cost of natural gas in any plant at any of the points involved?

A. I did not.

Q. Now, the present rates from the southern Illinois group and from certain of the other Illinois origin groups to Rockford, Freeport, and Dixon, were prescribed by the Illinois Commerce Commission in the three cases referred to in your testimony, were they not?

A. They were, with the addition of the Ex Parte 115 increase.

Q. The orders in those cases were modified to the extent necessary to permit the addition of those increases to the rates prescribed in those three cases?

A. Yes, sir.

Q. Now, the rates that the railroads have proposed here, the increased rates, are different from the rates prescribed by the Illinois Commission in those three cases, are they not? They are higher?

A. Yes, they are higher.

Q. Before the carriers published the increased rates that are under suspension here, from the Illinois origin groups [fol. 258] to Rockford, Freeport, Dixon and the other northern Illinois points involved, did they first petition the Illinois Commerce Commission for modification of the orders in those three cases?

A. No, they did not.

Q. You just filed the tariffs containing different rates or increased rates from those prescribed in the three cases?

A. We did, to comply with the interstate order in 25419.

Exam. Trezise: Do you want to let that answer stand, that the rates that the State Commission prescribed to Rockford, for example, are higher than the present rates? Oh, yes, it is higher, that is true, but not higher than the proposed.

The Witness: Well, I didn't understand the question that way. I understood the question, are the rates that we proposed higher than the rates that were prescribed by the Illinois Commission. Was that your question?

Mr. Stadell: Yes, that was my question.

The Witness: My answer was, yes.

Exam. Trezise: All right. Thank you.

By Mr. Stadell:

Q. Now, you are using the interstate rates from the Illinois groups to destinations in Wisconsin as the yardstick by which you are trying to sustain the suspended rates that you propose to the northern Illinois points, are you not?

[fol. 259] A. We have shown that the rates that we have proposed are no higher, in fact, that they are not as high as the rates to the interstate destinations.

Q. In Wisconsin?

A. Yes.

Q. And you stated, I believe, as is indicated at page 9 of the prepared statement that you passed around, that the present rate or present rates from the southern Illinois group to Beloit, Burlington, Fort Atkinson, Janesville, and Madison, Wisconsin, were prescribed by the Interstate Commerce Commission in the Lake Dock Coal cases as maximum reasonable rates?

A. I did make that statement, but I believe I didn't state it correctly. The Interstate Commerce Commission in the Lake Dock order, 14476, prescribed rates through southern Wisconsin and they said that rates lower than the rates they set out, which was $2.75, to that territory, compared to the then existing dock rates, would be prejudicial to the docks and preferential to the Illinois operators. So instead of being maximum rates, they were really minimum rates.

Q. Well, they were rates prescribed, were they not, to remove an alleged violation of Section 3 of the Act?

A. That is right.

Q. And the railroads could have complied with the order in that case, could they not, either by publishing the rates [fol. 260] which they did publish from the southern Illinois and other Illinois groups to Wisconsin, or by reducing the rates from the docks to points in Wisconsin?

A. If the rates from the docks had been reduced at that time, it would have complied with the order.

Q. Now, did the rates that you published in compliance with the order in the Lake Dock cases from the Illinois groups to points in Wisconsin, including the points in southern Wisconsin, which you referred to, result in increasing the rates from the Illinois mines to those points from 23 to 28, 30 cents per ton?

A. I don't recall the exact figure, but it was a substantial increase.

Q. And the rates in effect today to those points generally in Wisconsin were the rates that were prescribed in the Lake Dock Coal cases, that is, the rates you published in purported compliance with the order in the Lake Dock Coal cases, plus the general increase you referred to, Ex Parte 115 and Ex Parte 148, is that right?

A. I didn't get the first part of your question, Mr. Stadell.

Exam. Trezise: You mean from Illinois?

Mr. Stadell: Yes. You might strike that. I will ask you this question:

By Mr. Stadell:

Q. The rates you have in effect today, interstate, from the southern Illinois and the other Illinois groups to points [fol. 261] in Wisconsin, including the points named by you in southern Wisconsin, are generally the rates that you published in purported compliance with the Commission's order in the Lake Dock Coal cases, except that they have been increased by these general increases in Ex Parte 115?

A. That is correct.

Q. Are you still required to maintain the rates to points in Wisconsin from Illinois by the order in the Lake Dock Coal cases?

A. The order in the Lake Dock Coal cases, 14476, has been vacated.

Q. Isn't it also true that since the order in that case was entered, that the rates from the docks in Wisconsin to destinations in Wisconsin have been substantially reduced?

A. They have.

Q. Now, coming to the testimony that is set forth on the bottom of the first page of your prepared statement, you state there that the action of the Illinois Commerce Commission in suspending the proposed increased intrastate rates from the Illinois mines to the northern Illinois points involved created, as you would later show, undue, unreasonable and unjust discrimination against interstate commerce, and undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other.

[fol. 262] Now, dealing with the question of undue preference and undue prejudice, which you refer to, as having been created by the suspension of the proposed increased intrastate rates, will you tell us who is unduly preferred and who is unduly prejudiced?

A. The receivers in handling coal moving on Illinois intrastate rates are preferred as against the application of the interstate rates.

Q. At what point?

A. Well, at Beloit, for example.

Q. Is your answer correct? I think you misstated yourself.

A. Are you talking about preferred or——

Q. Well, either one. What intrastate receiver at any of the northern Illinois points is preferred?

A. The receivers at Rockford.

Q. Who?

A. Any one using the intrastate rates.

Q. And who is prejudiced?

A. The receivers in southern Wisconsin obliged to use interstate rates.

Q. Is there a competitive relationship—excluding for the moment Fairbanks Morse at Beloit—between any of the receivers of coal at any of the southern Wisconsin points which you have used as comparative points and the intrastate receivers of coal at any of the Illinois points to which [fol. 263] you are proposing increased intrastate rates?

[fol. 264] The Witness: My answer is, yes.

By Mr. Stadell:

Q. Who are they at the intrastate points and at the interstate points?

A. I can't name the receivers specifically.

Q. Can you name one or two, either a domestic consumer of coal or an industrial consumer of coal?

A. I don't like to pick out one particular industry. The [fol. 265] same thing applies to all of them who are using intrastate rates in competition with the interstate rates to the Wisconsin points.

Q. Well, of your own knowledge, you know of no receiver of coal at any of the Wisconsin or Iowa points which you have used as comparative points and any of the intrastate receivers at any of the Illinois points?

A. We have shown the tonnage that moved there on the state rates and on the interstate rates, and the same thing applies to all of them. It doesn't apply to a particular industry.

Mr. Zoll: Of course, Mr. Hamilton was merely stating in that part of his testimony the position of the carriers in a general way, and there will be witnesses from the lines that do serve these southern Wisconsin destinations who will probably be more familiar with the concerns located there.

Mr. Stadell: Well, Mr. Examiner, Mr. Hamilton has very definitely testified here that the intrastate suspended adjustment, by having been suspended by the Illinois Commission, created and I quote his testimony, "as I shall later show," undue, unreasonable and unjust discrimination against interstate commerce, and undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other."

Now, what I am trying to find out is the facts upon [fol. 266] which Mr. Hamilton's testimony is based.

Exam. Trezise: Pardon me. Could we just dispose of that with one question by the Examiner.

Mr. Hamilton, do you have any first hand knowledge of the competition and the intensity of that competition between these various receivers of coal, and in what respect is there competition? I think maybe if you answer that question you will answer part of Mr. Stadell's question.

The Witness: The first part of the answer is, no; and as to the competition, the consumers in Rockford, for example——

Mr. Vesey: Just a minute. I object, if the Examiner please, to answering the second question, if his answer to the first question is "No", that he has no first hand knowledge.

Mr. Stadell: It would be purely hearsay.

Exam. Trezise: As the Examiner understands it, Mr. Hamilton, they want to know, these people, in whatever business they are engaged at these respective origins, whether they compete with each other, and whether one salesman contacts the other salesman in the field, and they are selling the same kind of commodities, and just exactly the intensity of the competition, and in what respect they do actually compete. You do not know that, Mr. Hamilton?

The Witness: I can't answer that.

By Mr. Stadell:

Q. Have any of the interstate receivers of coal at any [fol. 267] of the compared points you have used complained to the railroads that they felt they were being unduly prejudiced by the maintenance of the present adjustment of rates across the state from the Illinois mines to the northern Illinois points involved?

A. Not that I know of, although there have been complaints filed in Wisconsin, for example, at Janesville. Of course, Janesville has since been set by the Interstate Commerce Commission.

Q. Well, the complaint there merely involved the reasonableness of the rates to Janesville, did it not? There was no allegation that there was any prejudice?

A. No, there was not.

Q. And you have no knowledge, have you, of any shipments of coal that have been prevented from being made to the interstate points by the maintenance of the present adjustment of rates from the Illinois mines to the northern Illinois points involved?

A. I have not.

Mr. Stadell: I believe that is all I have. Thank you very much.

Exam. Trezise: You do know, Mr. Hamilton, that some coal traffic moves in interstate and state commerce to these

respective destinations—at least the exhibits show that, do they not?

[fol. 268] The Witness: Yes, sir, they do. There is both state and interstate application at Rockford, for example.

Exam. Trezise: In other words, from the southern Illinois, for example, that being the proper selection of an origin point, there is some coal traffic moving to Rockford in state commerce, and there is some moving in interstate commerce to Beloit, is that right?

The Witness: Yes, that is correct.

By Mr. Stadell:

Q. I have just one more question. Do you know whether the Fairbanks Morse and Company's plant at Beloit is manufacturing the same commodities at the present time that it was manufacturing when the hearings were held and the evidence was presented in the Fairbanks Morse case?

A. I don't know what they are manufacturing. Most manufacturers at the present time are doing a lot of different work than they do under ordinary conditions. I have no knowledge of what they are making.

Q. You don't know then they are engaged entirely——

Mr. Kaier: He said he didn't know. Why tell him.

Mr. Stadell: Your answer is, you don't know?

The Witness: Yes, that is right.

Mr. Stadell: All right, that is all.

Exam. Trezise: Mr. Vesey, do you have some questions?

Mr. Vesey: Yes, I have one or two.

By Mr. Vesey:

Q. Mr. Hamilton, will you direct your attention to the [fol. 269] top of page 8 of your prepared statement, and particularly to that sentence which reads, "Sterling is continued the same as Dixon and the Dixon rate also sets the rate to Amboy." Now, you were speaking in that connection with the movement of coal from southern Illinois. Am I to understand from that statement, the reason for that continuation was the competition that exists, or at least you thought existed between Sterling and Dixon, that is, the industries in those two localities?

A. Well, the reason for that was from southern Illinois the rates to Sterling and Dixon have been on the same relationship for a long time. Therefore, they were continued to Sterling.

Q. Well, was that because, in your opinion, there were competitive industries in those two localities which would necessitate the same rate to be based to both from the same origin groups?

A. I don't know that there are competitive industries, but it is an adjustment that we have had for some time and it was continued.

Q. In other words, I take it from that answer that you know of no reason why there should be a distinction in the rate to the one as against the other, is that it?

A. Not from southern Illinois.

Q. Would it be different from any other origin?

A. It might be different from some shorter group, the [fol. 270] situation might be different.

Q. You mean the rates were continued the same because of the length of the haul from some particular origin group?

A. Well, not particularly the length of the haul. That is the basis that has been carried there for a long time. We were not attempting here to disrupt anything by this adjustment. We are simply trying to comply with an order of the Commission.

Q. Don't you know, as a matter of fact, Mr. Hamilton, the basis for that parity of rate was the supposed competition between industries in those two localities?

A. It may be.

Q. Don't you know that?

A. Well, in working out a rate adjustment, if somebody has had the same rate as another town nearby, whether there is actually competition or not, they usually expect the same adjustment that the other place would get.

Q. Now, if that be true, with respect to what origin group, and I am asking you now a hypothetical question——

A. I am talking about southern Illinois.

Q. Then let us say, if that be true, with respect to coals from one origin group, can you think of any reason that would cause a change from that principle with respect to a second origin group, if assuming that the coal moves to both localities via virtually the same routes?

[fol. 271] A. It might be necessary to comply with the long and short haul rule to carry a lower rate from one group than you would have to apply from another group where that condition didn't exist.

Q. That is why you have your Dixon rate, as you testified the other day, that is why you have it, in the first instance?

A. I didn't get that.

Q. I say, that is why you have the Dixon rate what it is, as you testified the other day, because of the long and short haul provision, with reference to Chicago?

A. That is right.

Q. Now, confining our attention to these two towns, unless that be inherent, I take it from your answer that you know of no reason why there should be a change, is that correct?

A. I don't know of any other reason, no.

Q. Now, you are familiar with the rates that have been proposed by the carriers from the several origin groups to each of the destinations in the affected territory, are you not?

A. Generally.

Q. Isn't it true that your particular railroad in these proposed rates to certain of the suspended points has proposed rates which at times are higher than those generally proposed by the carriers and at other times lower than those generally proposed by the carriers to the same point from the same origin group?

[fol. 272] A. I don't know what you refer to.

Q. I am just asking you, as a general proposition, is that true?

A. Not as a general proposition, it isn't.

Q. Well, let us bring it down to a specific case. The rates which your road has proposed from, let us say, points in Peoria County to destinations on your line are lower, are they not, than the rates which prevail and are proposed by other carriers from origins in the same locality to either the same destination or destinations that is akin to yours on their own line?

A. I think there is a situation where the Burlington has some higher rates via a circuitous route than we have to Peoria.

Q. Isn't it also true the Burlington has some lower rates than yours?

A. It may be.

Q. Now, when you came up against a situation such as that—and I am asking you these questions to find out what you did—how did the carriers determine which rate was that rate, that resulted in discrimination as against interstate commerce? Just tell us how did you go about it?

A. Well, if there are two rates, one lower than the other, the business would probably move on the lower rate. In our adjustment here, we have, generally speaking, and [fol. 273] there may be some exceptions from it, but we proposed generally the same increase in the current rates.

Q. The same increase in the current rates?

A. Yes.

Q. Are you familiar with the rates to Byron, Illinois, from the various origin groups in Illinois, just using that as an example?

A. Well, not particularly familiar with them.

Q. All right. Let me give you this as an assumption, and then let me ask you a few questions with respect to the principles involved. I ask you to assume that the rate to Byron, Illinois, via the Chicago Great Western Railroad and the C. B. & Q., the present rate is $1.64. In fact, the present rate is the same——

A. Excuse me. What rate are you talking about?

Q. The rate from Fulton County.

A. I haven't said anything about Fulton County. There is another witness here who will talk about the rates from Fulton County.

Q. Well, it doesn't make any difference. I am just asking you about general principles here. Assume the present rate is $1.64 from the Fulton County origin group to that destination. Then I will ask you to assume that certain of the carriers have proposed an increased rate of $1.74—one has proposed $1.64 and two have proposed rates of [fol. 274] $1.60, or 4 cents lower. Now, what principle would be followed by the carriers in determining upon rates like that as proposed rates, when the present rates are $1.64? What principle did you use or didn't you use?

A. I didn't testify anything about those rates and I don't think that is a proper question.

Q. I haven't gone to your southern Illinois group. I suppose I might have found the same thing there. But what principle prevailed that might lead to that type of proposal, if any, that you know of?

Mr. Zoll: I would like to ask, Mr. Vesey, if you mean why were such rates published from the Fulton-Peoria group?

Mr. Vesey: Yes, what happened that caused that type of rate.

Mr. Zoll: We have, Mr. Examiner, tried to get various witnesses to testify about the rates for certain groups. Mr. Nelson is going to testify about the rates from Fulton-Peoria.

Exam. Trezise: Did you apply any principle with respect to those rates, Mr. Hamilton, and did you have charge of the applying of any particular principle in that case? As a matter of fact, and if you want to answer it in a hypothetical way, what would you have applied if you did apply one?

The Witness: As a matter of fact, we don't serve Fulton [fol. 275] County, and the measure of the increases in those rates were decided by the lines that serve it.

Exam. Trezise: He wants to know if you did serve it and you did do this thing, what would you have done, if you want to answer that question.

The Witness: I think I would have to sit down and study it over.

Exam. Trezise: You would have to become more familiar with the rates and the influences that applied in the territory that you do not serve before you could give an intelligent answer as to what you would have done had you done something concerning something that you didn't have anything to do with, is that right?

The Witness: That is correct, yes, sir.

Exam. Trezise: Now, let us not have so many more of those questions. May we confine our testimony to what the witness knows about and let us get away from the hypothetical question, if we can.

Mr. Vesey: If the Examiner please, I don't want to take this witness down point by point. I thought perhaps there were some general principles here that we could elicit to save some time. If not, I will take him through this point by point.

By Mr. Vesey:

Q. Mr. Hamilton, take your own rates to Dixon, Illinois, proposed by you, from Peoria. You have proposed a rate [fol. 276] to Dixon of $1.37, have you not?

Mr. Cardy: What page is that on, Mr. Vesey?

Mr. Vesey: I am not referring to his particular exhibit.

Mr. Zoll: What is the route, Mr. Vesey?

Mr. Vesey: Illinois Central direct.

Mr. Zoll: From Fulton-Peoria?

Mr. Vesey: From Peoria.

The Witness: That was an increase of 5 cents a ton, same increase that was made from the other origins.

Mr. Vesey: Did you answer the question?

The Witness: I answered that that was an increase of 5 cents a ton there, the same as made from the other origins.

By Mr. Vesey:

Q. But the rate is $1.37?

A. Yes, sir.

Q. What is the mileage involved there from Peoria via your line? If you turn to page 11 of Exhibit 3, I think you will find it.

A. 123.1 miles, shown on page 11 of Exhibit 3.

Q. Now, isn't it true that the rates which you have proposed via your road and the C. B. & Q. Railroad is $1.55 from Fulton County to Dixon? That is also to be found on page 11 of your Exhibit 3.

A. That exhibit shows $1.50—I guess the suspended rate is $1.55.

Q. And the mileage as shown on that same page for that, [fol. 277] that is the average mileage there from the group, 123.8 miles, isn't it?

A. The average for the group is, yes, sir.

Q. Virtually the same as the mileage involved in the case of your direct movement from Peoria?

A. The average from Peoria is 110.7 miles.

Q. But I am speaking about your own 123.1.

A. Yes, but our distance is not the short distance there.

Q. No, I am just speaking about your own particular line and the distance over your particular railroad is 123.1, isn't that correct?

A. Yes, sir.

Q. Virtually the same as the average group in the last illustration, is that right?

A. That is right, but it is not the same as the average from the group.

Q. Now, tell me, Mr. Hamilton, which of those two rates are causing this intrastate discrimination as against inter-

state commerce, as you speak of? Is it the $1.32 rate or the $1.50 rate?

A. Well, I couldn't put my finger on the particular rate.

Q. When you and your committee came up against situations like that, how did you go about determining which of the rates was causing the discrimination?

A. We tried as near as could be done to continue the re- [fol. 278] lationship which we had with the rates in the various groups.

Q. Well, which rate is the discriminatory rate? Is it the $1.32 that is causing the discrimination or it is the $1.50 rate?

A. I can't say.

Q. Do you know, and if so, what is the discrimination?

Mr. Zoll: He said he couldn't say.

Mr. Vesey: Well, I say, does he know?

The Witness: No, I don't.

Exam. Trezise: And we might ask, did you feel that it was necessary for you to determine the answer to that question before you made this allegation?

The Witness: No, sir, I did not.

Mr. Vesey: That is all.

Exam. Trezise: Do we have any further questions of Mr. Hamilton?

Mr. Bather: I have one, if the Examiner please.

Exam. Trezise: Mr. Bather.

By Mr. Bather:

Q. Mr. Hamilton, in Exhibit No. 2, I note that in so far as the rates to Elgin, Illinois, are concerned, no increase is proposed, the present rate from southern Illinois being $2.20. Why was that rate level continued as it is at present, without any increase?

A. I can't say, Mr. Bather. Evidently it was considered not necessary to increase that rate. However, there are [fol. 279] other lines that serve Elgin, that may be able to give you a more definite reply to your question.

Q. You don't know why that rate was left stationary?

A. No, sir.

Mr. Bather: That is all.

Exam. Trezise: Any further questions?

Mr. Cardy: Just one question.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Hamilton, as I understand it, none of your testimony is directed against the rates from northern Illinois. In other words, you said in the opening that what you said had no application on the rates from northern Illinois to these destinations, for the reason another witness would follow you on that?

A. That is correct.

Q. Just one other question. I notice in the preparation of these exhibits that you refer to certain origin groups, including all of the groups in Illinois, except the northern Illinois group, and you describe the northern Illinois mines as in the northern Illinois district. Is there a reason for that, Mr. Hamilton?

A. Well, there was a good deal of short haul territory here involved, where the rates were not the same from all points in the northern Illinois group, and they were for that reason taken out of the general exhibit and a special exhibit [fols. 280-343] made to show those specific origins.

Q. In other words, is this stating it correctly, that generally speaking, the rates from northern Illinois to points in northern Illinois are generally what might be termed the short haul rates, and a great many different rates which would be rather difficult to tie it to a wide adjustment such as we have here involved, is that true, generally speaking?

A. Well, there are a number of points where that condition exists.

Mr. Cardy: That is all.

Exam. Trezise: If there are no further questions, you may be excused, Mr. Hamilton.

The Witness: Thank you.

(Witness excused.)

[fol. 344] Exam. Trezise: Call the next witness.

Mr. Biaett: We call Mr. C. J. Nelson.

[fol. 345] C. J. Nelson was sworn and testified as follows:

Direct examination:

Mr. Biaett: Mr. Examiner, I submit Mr. Nelson's Exhibits 8, 9, 10 and 11, for identification.

The statement showing production and disposition of coal in net tons at mines in northern Illinois for the years 1937 to 1941, inclusive, will be Exhibit No. 8.

(Respondent's Exhibit No. 8, Witness Nelson, marked and received in evidence.)

Mr. Biaett: The statement showing production and disposition of coal at mines shipping by rail listed below during years 1932 to 1941, inclusive, consisting of two pages, will be Exhibit No. 9.

(Respondent's Exhibit No. 9, Witness Nelson, marked and received in evidence.)

Mr. Biaett: Statement showing number of net tons of bituminous coal forwarded from mines in Illinois, Indiana and western Kentucky for ten-year period January 1, 1932, to December 31, 1941, by years, to various destinations in the states of Illinois, Iowa, Wisconsin, Missouri and Nebraska as shown herein, will be Exhibit No. 10.

(Respondent's Exhibit No. 10, Witness Nelson, marked and received in evidence.)

Mr. Biaett: Exhibit No. 11 is a one-sheet statement showing average level of rates from all origin groups to repre-
[fol. 346] sentative suspended points and representative comparative points.

(Respondent's Exhibit No. 11, Witness Nelson, marked and received in evidence.)

By Mr. Biaett:

Q. Will you state your name, please.

A. C. J. Nelson.

Q. What is your position, Mr. Nelson?

A. Fuel Traffic Manager, Chicago, Burlington & Quincy Railroad, 547 West Jackson Boulevard, Chicago.

Q. How long have you held that position, Mr. Nelson?

A. Three years. Prior to that time I was Coal Traffic Manager for four years. Therefore, during the past seven

years I have had supervision over rates, divisions, solicitation of coal and coke, and for the past three years petroleum in addition to the coal and coke. Prior to seven years ago I held various positions in the Traffic Department of the Burlington Railroad.

Q. Have you made a study of the issues involved in these proceedings, Mr. Nelson?

A. How was that?

Q. Have you made a study of the issues involved in these proceedings?

A. I have, yes, sir.

Q. Do you have a statement which you would like to make respecting the issues involved in these proceedings?

[fol. 347] A. I would.

Mr. Vesey: If the Examiner please, I will object to that. It seems to me that is too great latitude to give the witness here when it comes to a controversial matter. That is just the same as giving him a broad blanket request to go ahead and say something.

Exam. Trezise: Do you want to modify your question?

Mr. Biaett: I don't believe it is necessary, Mr. Examiner. This witness is a traffic witness and qualified, and we are entitled to have him go ahead with his statement. We can proceed on questions and answers, but it hasn't been prepared in that way and it would be quite a time waster for us to proceed in that manner.

Exam. Trezise: Well, then when you say statement, Mr. Biaett, you mean you want him to describe the rate situation? Is that what you had in mind?

Mr. Biaett: I might phrase it in that way.

Exam. Trezise: Is that what you want? You can phrase it to conform to what he is going to do.

By Mr. Biaett:

Q. Mr. Nelson, have you made a study of the rates involved in these proceedings?

A. I have.

Q. Are you familiar with the rates surrounding the transportation of coal from the various Illinois groups to the suspended destinations in Illinois and the comparative desti-

[fol. 348] nations in Iowa and Wisconsin?

A. Yes, sir.

Q. Will you please proceed with your statement of the facts surrounding the transportation of coal from the Illinois groups to the destinations involved in these proceedings?

Mr. Morgan: Off the record, may I ask is he limiting his testimony to the Burlington or all the railroads?

Mr. Biaett: He will state himself the manner in which he is limiting his testimony.

The Witness: I am testifying for all the petitioning lines, as well as the Burlington Railroad. I would like to make one short statement about the method in which the carriers have proposed the rates. There seems to be some question about the manner.

I desire to state that the rates from mines in Illinois, Indiana and west Kentucky to the destinations in northern Illinois, which the carriers have proposed, which are involved in this proceeding, constitute an intricate and complicated adjustment because of the fact that many interests are involved and that the rates apply over many routes and which enter the territory from three different directions, east, south and west. In view of this situation, the carriers have in their effort to raise the level of the present rates, which are admittedly on a depressed basis——

Mr. Bather: I object to that. That is a conclusion.

[fol. 349] Mr. Morgan: I object to that.

Mr. Biaett: Now, Mr. Examiner, these witnesses are not permitted to express conclusions and opinion on direct testimony, and yet, all these gentlemen insist upon them rendering conclusions and opinions on cross examination. I can't understand that, and I would like to have it determined once and for all. I think it would save a lot of time.

Exam. Trezise: Didn't you say "admittedly"?

The Witness: Yes, sir.

Exam. Trezise: The witness, I understood, stated "admittedly". I think that that may not be exactly the word that he meant, and if he will use some other term that he thinks would be more suited to it, if he has one, I think there wouldn't be any objection to it. Have you some other form of expression you want to use, because you are going to be cross examined on that "admittedly".

The Witness: I will change that, Mr. Examiner. It is my opinion that they are on a depressed basis.

By Mr. Biaett:

Q. Mr. Nelson, did not the Interstate Commerce Commission find the rates to be on a depressed basis in the decision in Docket No. 23130, 182 I.C.C. page 537?

Mr. Vesey: I object, if the Examiner please. The decision speaks for itself.

Mr. Bather: I object to that.

Exam. Trezise: Mr. Nelson—I don't know why I should [fol. 350] get into this—the Commission said that the rates to northern Illinois in that 13th Section case were relatively low, and so they were also from Indiana, and that is just about as far as we can go on that, is that true?

The Witness: That is right.

Exam. Trezise: If you know what they said in the case, I don't know that that makes any difference now.

Mr. Wood: Our point is, Mr. Examiner, he can't improve much on what the Commission said.

Exam. Trezise: Yes, sir, and I am with you 100 per cent.

Mr. Wood: And I insist he not gild the lily.

Exam. Trezise: I think we may proceed.

The Witness: They have, so far as possible, endeavored to perpetuate the present relationships for differences in the rates from the various districts, by applying a uniform increase. In some instances it has been necessary to depart from this formula in order to avoid violation of Section 4 of the Interstate Commerce Commission Act and Section 40 of the Illinois Commerce Law, but generally, it has been adhered to. I know of no fairer or more satisfactory manner, from the standpoint of all concerned, in which to do this.

I would like to refer to Robertson's Exhibit No. 1, which is a map of the origin districts in Illinois, Indiana and western Kentucky. The C. B. & Q. serves mines in a number of these districts; southern Illinois, which is shown by letter [fol. 351] H; Centralia, by the letter E, Springfield, by the letter D, Fulton County, by the letter C, Peoria, Alpha, Victoria, Rushville, in northern Illinois. They also serve part of the destination area which is involved in this proceeding. Therefore, they have a direct interest in the entire adjustment. All my testimony will to a great extent relate to the rates from northern Illinois, Fulton County, Peoria, Rushville, Victoria, Alpha, and Atkinson. Never-

theless, I will have something to say about those from the other districts.

The rates on coal from mines in northern Illinois, Fulton County, Peoria, Victoria, Rushville, Alpha, and Atkinson to the destinations involved have never been definitely related to those from other districts in Illinois or Indiana or to each other. For this reason, my testimony will deal with the rates from each individual group or origin point.

Mr. Cardy: Was northern Illinois in that statement? I didn't hear that.

The Witness: Yes, sir.

Mr. Cardy: All right.

The Witness: The exhibits presented by witness Robertson showing the distances, the history of rates from each group or origin point to representative destination points indicates that the distances involved are comparatively short and that the present rates are on a low level. The suspended rates which the carriers are supporting are also low [fol. 352] in level and cannot be classified as unreasonable.

Mr. Vesey: I object to that and ask that that be stricken.

Exam. Trezise: That is your opinion, Mr. Nelson?

The Witness: That is my opinion, yes, sir.

Exam. Trezise: Let it go at that.

The Witness: The present rates have either been established by voluntary action of the carriers or have been published in compliance with orders issued by the Illinois Commerce Commission.

The mines in the northern Illinois group extend over an area of 50 miles east and west, or from Depue, on the west, to Wilmington, Illinois, on the east. Because of their geographic location, compared with the destination area, the rates and routes vary greatly, making it necessary to show the distance and rates, present and suspended, from each origin point to each representative destination. Northern Illinois is shown on the map by an encircled letter A.

Victoria is located in Knox County on the Galesburg and Great Eastern Railroad, 17 miles east of Galesburg and north and west of the Fulton County district. The Galesburg and Great Eastern Railroad connects with the C. B. & Q. Railroad at Wataga, 7 miles east of Galesburg. The present rates from this point to destinations on railroads other than the C. B. & Q. in the destination territory involved

[fol. 353] are generally the same as those from Fulton County. To points on main line of the Burlington east of Wataga to and including Aurora, and the points on the Rockford Branch, the rates are generally five cents less than those from Fulton County. To points north of Galesburg, in the tri-city area, they are five cents less, and to points east of Peoria they are six cents less. That includes Chicago. To the balance of the C. B. & Q. destinations in northern Illinois they are generally the same as those from Fulton County. Peoria is located north and east of the Fulton County District, and the rates therefrom are generally the same as those from the Fulton County District. In some instances they are different, and for this reason the Peoria situation has been shown separately.

Rushville, Illinois, is a short distance south of the Fulton County District, and the rates therefrom are generally five cents per ton higher than those from Fulton County. You will note Rushville on the map south and west of the Fulton County field. Alpha is located 18 miles north of Galesburg and south of the tri-cities, approximately 60 miles north and west of the Fulton County District. The rates therefrom are generally less than those from Fulton County to the destination area involved.

Atkinson is located about 30 miles — of Rock Island, Illinois, on the Rock Island Railroad, and is north and east of the Fulton County District. The rates therefrom are gen- [fol. 354] erally less than those from Fulton County to points on the Rock Island Railroad and the same or higher to points on other railroads. In some instances there are no through rates in effect.

The mines in the northern Illinois group are as previously stated spread over a large area. They are, generally speaking, south and east of the destination area, and the distances from mines to destinations vary greatly. The hauls are comparatively short and it has not been possible for the carriers to maintain in all instances uniform rates from the group to each destination.

In Section 4 of Robertson's Exhibit No. 3——

Mr. Vesey: May I interrupt just a moment, Mr. Nelson. Off the record, you said it would not be possible for the carriers to effect uniform rates from the group. What group did you have in mind?

The Witness: Northern Illinois.

Mr. Vesey: Thank you.

The Witness: In Section 4 of Robertson's Exhibit No. 3 is shown rates and average distances from these mines to representative suspended and comparative destinations. To illustrate this variation there is shown on page 2, section 4, a rate of $1.88 from Braidwood, Illinois, to Sterling, Illinois, a distance of 128 miles, applicable via the Alton, E. J. & E., and C. & N. W. Compare this rate with $1.59 [fol. 355] from Oglesby, Illinois, to Sterling, Illinois, a distance of 59 miles, shown on page 5 of the same section.

Many of the rates have been established in compliance with the Illinois Commission's orders in dockets 13568 and 13569, where they prescribed a rate of $1.00 to Rockford and Freeport. In some instances there is a variation of five cents per ton between the intrastate and interstate rates which has been caused by the application of ex parte 115 increase. In other instances the variation intrastate versus interstate rates is greater and is due to the fact the carriers did not in all cases reduce interstate rates when the intrastate rates were published in compliance with the order just mentioned.

The mines in Fulton County District are the largest and most important of the districts located in the northern part of the state. The field lies almost entirely within the county that bears its name and it is west and south of Peoria. This field, as previously stated, is indicated on the map by the letter C.

Turning to the northern Illinois district for a moment, I want to point out the fact that the largest mine in the field is one located at Wilmington. The other mines in the district are comparatively small and are not of any great importance from a railroad traffic standpoint. This is illustrated by an exhibit that I have presented, No. 8. [fol. 356] It is a statement showing production and distribution of coal at mines in northern Illinois having a rail connection, during the five-year period, 1937 to 1941, inclusive. At two points, Granville and Marseilles, the mines have been abandoned. Therefore, under present conditions there is no necessity for rates from these points. The carriers, however, elected to maintain them with the hope that new mines would be opened some day and production resumed.

It will be noted that at all mines, except the one at Wilmington, the tonnage by trucks greatly exceeds that shipped

by rail; also that even at the Wilmington mine, the truck tonnage is quite high, being 178,000 tons in 1941.

Now, this exhibit is self-explanatory. The five-year period is named in one column.

Mr. Cardy: Which number is the exhibit?

The Witness: No. 8. The total production is shown in the column after the years. The next column shows the commercial coal if it is shipped by rail. The next one shows the coal that is sold to the railroads. Next is the coal that is used in locomotives. The next shows the number of tons sold to the truck trade. The next to the last column is the number of tons consumed at the mines. The last column is all coal not sold, including waste. The authority for the figures is shown at the bottom of the page.

All of the mines are equipped with truck chutes or bins [fol. 357] and they depend on the truck trade to take the majority of their domestic sizes, that is, lump, egg, nut, and stoker. By that statement, I mean all of the mines with the exception of the Wilmington mine.

Their realization on coal sold to trucks is greater than that on coal shipped by rail due to higher mine prices which they maintain and which are permitted by the National Coal Division. The greater part of the rail movement, except from Wilmington, consists of fine or slack sizes and the majority of it is shipped to Chicago, Ottawa, LaSalle and Streator, Illinois. This exhibit shows that with the exception of the Wilmington mine, the mines have no great interest in the rates involved in this proceeding.

Sections 5 and 6 of Robertson's Exhibit No. 4 contain statements which indicate the level of the suspended rates to representative suspended destinations, also of present rates to representative comparative destinations. Columns E and D on these statements show the percent the suspended rates are of the H. H. scale for the distance involved, and it will be noted that generally speaking all are much below the level of the scale, and that the suspended rates are lower in level than the comparative rates. This is particularly true as to rates from Wilmington at which point the greater part of the rail movement originates.

The statements also show the mills per ton mile produced [fol. 358] by the rates and it will be noted that they are well below a maximum reasonable basis, particularly in view of the short hauls involved.

Mr. Bather: Now, Mr. Examiner, I think this is argumentative. I think all that testimony has been put in this record by previous witneses, and I don't believe this is the time to argue the case. All of this testimony is nothing but argument.

Mr. Biaett: The witness can certainly state in his opinion what certain facts show.

Mr. Bather: I think all of that is in the record now, based on the testimony of Mr. Robertson and Mr. Hamilton.

Mr. Morgan: His last statement was not an opinion statement.

Exam. Trezise: So far as I know, I haven't heard anything that I could rule out. You can tell what the rates were, higher or lower than other rates. That might help the Commission, at least call it to their attention. Go ahead.

Mr. Wilkinson: I take it, Mr. Examiner, if the witness says, as I understood the last statement to be, that this shows the rate is unreasonable, or something of that sort, we are to take that as his opinion, that he is expressing his opinion that the rate is unreasonable, rather than any of us admitting it is a fact.

Mr. Kaier: We won't attempt to bind you by that state-
[fol. 359] ment, Mr. Wilkinson.

Mr. Wilkinson: I think that might save some objection, if we understand he has used that expression as merely expressing his opinion.

Exam. Trezise: Yes. That is giving one man's opinion as representing the carriers, as he does.

The Witness: I have a few comments to make about the general adjustments indicated by the rate history being in Robertson's Exhibit No. 4, sections 1 and 2. I will select Rockford as a representative destination. Rockford is shown on page 8. The first important change was a general increase by General Order No. 28, effective June 25, 1918. The next general increase was under Ex Parte No. 74, August 26, 1920, originally 33⅓ per cent on Illinois intrastate traffic, and later made 40 per cent, the same as interstate traffic.

This was followed by a 10 per cent reduction. Reduced rates of 1922, on July 1st, 1922. On August 20, 1930, the rates from northern Illinois to Rockford, Freeport, and intermediate points were reduced in compliance with the Illinois Commission's order in Dockets 13568 and 13569, the

reduction at Rockford being 47 cents. On November 15, 1937, a general increase under Ex Parte 115 was made, and the intrastate increase was 5 cents, and the interstate 10 cents. At this time the carriers attempted to increase the intrastate rates from northern Illinois the same amount as from southern Illinois, which practice was permitted by [fol. 360] the Interstate Commerce Commission, the southern Illinois increase being 10 cents per ton. They were unable to do so because of the opposition of the northern Illinois and Fulton-Peoria operators who maintained that there was no definite relationship between the northern Illinois and Fulton-Peoria and southern Illinois rates.

Mr. Cardy: What was that last statement?

The Witness: No definite relationship between the northern Illinois and Fulton-Peoria and southern Illinois rates.

Mr. Cardy: All right, that is your opinion, I suppose.

The Witness: That was the opinion of the Fulton County and northern Illinois operators. When they took it before the Illinois Commission, they took the position that the rates from northern Illinois should be increased in accordance with the scale authorized in the Ex Parte 115 order. The Illinois Commerce Commission sustained their objections and issued their order accordingly. The application of a uniform increase would have maintained the relationship or difference in rates that then existed. The next general increase was 5 cents per ton on May 16, 1942, under Ex Parte 148.

I have another exhibit, No. 9, which consists of two pages, and is a statement showing production and disposition of coal in net tons at mines shipping by rail located in Fulton, Peoria, Victoria, Alpha, Rushville, and Atkinson groups or origin points, during the years 1932 to 1941, inclusive. [fols. 361-364] This statement is similar to Exhibit No. 8, except it covers a longer period. The number of mines shown in the Fulton County District is separated between strip and shaft operations, and attention is directed to the increase in the number of strip mines and the decline in the number of shaft mines.

. . . . . .

[fol. 365] The Witness: The mines in Peoria County are all shaft mines and all have been closed permanently, except one—that is, all the mines having rail connection have closed with the exception of one. The majority of the com-

mercial coal shipped from this mine goes in cars and is billed to industries in the Peoria-Pekin District. The largest sizes, that is, lump, egg, nut, is sold to trucks.

The mine at Victoria is a strip operation which opened in 1936 and has produced heavily since then. The commercial rail movement in 1941 was over 475,000 tons.

The mine at Alpha, Illinois, is a shaft operation and a large part of its production is sold to trucks. During the last three of the ten years shown on the statement, the truck movement has exceeded the commercial rail movement. A large part of the commercial rail movement consists of fine coal that is shipped to the tri-cities.

The mine at Rushville, Illinois, is a strip operation which opened in 1941, and more than one-half of its output is sold to trucks. The mine at Atkinson is a strip operation and a steady producer. A large part of the rail movement is [fols. 366-369] shipped to the tri-cities and LaSalle, Illinois, Clinton, points in eastern Iowa such as Clinton, Cedar Rapids, Waterloo, Iowa City; authority for the figures in the statement *are* shown at the bottom of page 15.

Exam. Trezise: We will adjourn at this time until 10 o'clock tomorrow morning.

Mr. Bather: Before we get off of that exhibit, Mr. Examiner, I would like to ask for my own information, what is the difference between railroad coal and coal used on locomotives? Why have you separated those?

The Witness: The railroad coal is that which is loaded in cars and turned over to the railroads at the mine; and that which is sold to locomotives, that is what is loaded into locomotives at the mines.

Mr. Bather: But the locomotive coal would essentially be railroad coal, would it not?

The Witness: Yes, it is railroad coal.

Exam. Trezise: Ten o'clock tomorrow morning.

(At 4:45 o'clock P. M. March 22, 1943, adjourned to 10 o'clock A. M. March 23, 1943.)

* * * * * * *

[fol. 370] Let's proceed.

C. J. Nelson resumed.

Direct Examination (Con't).

By Mr. Biaett:

Q. Mr. Nelson, will you continue with the discussion of your exhibits, beginning with Exhibit No. 10.

A. I have previously explained the necessity of considering separately instead of collectively the rates from Fulton County, Peoria, Victoria, Rushville, Alpha and Atkinson, Illinois, in this proceeding. Fulton County is considered the most important of these groups because of the large and increasing volume of tonnage that is produced therein.

In the statement showing history of rates from various [fol. 371] groups to representative suspended and comparative destinations, sections 1 and 2 of Robertson's Exhibit No. 4, I will again select Rockford for the purpose of commenting thereon.

Mr. Morgan: Mr. Examiner, we can't hear over here.

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Proceed, Mr. Nelson.

The Witness: These comments apply not only to the Fulton County rate but also to other rates shown in the statements.

The first change in rates from Fulton County to Rockford was an increase of 15 cents on July 20, 1917. The rate was advanced from 87 cents to $1.02. The next was the General Order No. 28 increase in 1918, which was followed by Ex Parte No. 74 increase in 1920 and the general 10 per cent reduction (reduced rates of 1922) in 1922. In 1930, a reduction of 17 cents was made in compliance with Illinois Commission Order Docket 13569; and a further reduction of 14 cents in August of 1930, the latter being voluntary on the part of the carriers. Rates to Freeport and Beloit and intermediate points were affected by this adjustment.

The Ex Parte 115 increase was added in 1937 and Ex Parte 148 increase in April of 1942, leaving the present rate $1.55, which is 68 cents higher than it was in 1910.

During the same period, the rates from other fields in-
[fol. 372] creased more than this amount. Southern Illinois rates increased 92½ cents; Belleville 83 cents; Princeton $1.00. The present rate from Fulton County is 60 cents less than the rate from southern Illinois. In 1910 the difference was 35 cents.

Rates from Beloit are generally the same as those from Fulton County. In some instances rates from Fulton County apply through Peoria via certain routes. Illustrations of where Peoria rates are different are as follows. To Amboy, the Peoria rate is 18 cents lower via the Illinois Central than the Fulton County rate and 48 cents higher via other routes. The Dixon rate, from Peoria—no, Dixon, Illinois, where Peoria rate is 18½ cents lower; Polo, Illinois, the Peoria rate via some routes is lower than via others; Rochelle, Illinois, the rate from Peoria is 31 cents higher than the rates from Fulton County. Rates from Peoria via the Burlington Railroad to northern Illinois destinations are generally higher than the rates from Fulton County. Mines at Peoria have for many years sold the majority of their production to consumers in the Peoria-Pekin district. The lump, egg and stoker sizes, commonly known as domestic sizes, are usually sold to truckers at the mines and the fine or slack sizes loaded into cars for switch movement to industries; therefore, the movement into northern Illinois has been very small. In some instances, distances via the C. B. & Q. are greater than that via direct
[fol. 373] routes. These facts are the principal reasons why the rates via the C. B. & Q. have been maintained on a higher level. They are to a great extent paper rates.

Rates from Rushville, Illinois, are generally 5 cents per ton higher than rates from Fulton County. Rushville is located on the Burlington Railroad south of Fulton County. The average distance from this point to the destination territory involved is about 30 miles greater than the average distance from Fulton County.

Rates from Victoria to destinations in northern Illinois on roads other than the Burlington are generally the same as those from Fulton County. To destinations on the C. B. & Q. in the eastern part of the territory or on the line running north from Aurora to Rockford, also to points in the western part, toward the Tri-Cities, they are 5 cents less than the rates from Fulton County. To the balance of the C. B. & Q. points they are the same. The average dis-

tance from Victoria to the 12 representatives suspended destinations is 17 miles less than the average distance for Fulton County.

Rates from Alpha, Illinois, to destinations in northern Illinois on roads other than the Burlington are generally the same as the rates from Fulton County. To destinations on the C. B. & Q. in the western part of the destination area, they are less; and in the eastern part they are the same. The [fol. 374] average distance from Alpha to the representative suspended points is approximately 40 miles less than the average distance from Fulton County.

The mine at Alpha sells a large part of its domestic sizes, that is, lump, egg, nut and stoker, to trucks; and therefore the rail movement consists principally of slack or fine sizes, which is shipped to industries in the Tri-Cities. The small amount of rail coal that is shipped to destinations in northern Illinois goes to those on the C. B. & Q., Sterling and west thereof.

The Illinois Commerce Commission in docket 13572, decided May 19, 1926, as modified by general increase Ex Parte 115, prescribed rates from Alpha to destinations in northern Illinois within the radius of 87 miles which were less than those from Fulton County to the same destinations. The Interstate Commerce Commission prescribed rates from Alpha to destinations in Iowa within a radius of 100 miles from Davenport, which were less than those from Fulton County. 182 I. C. C. 537; 232 I. C. C. 5.

To many destinations in northern Illinois located on roads other than the Rock Island Railroad, there are no through rates in effect from Atkinson, Illinois. To others the rates from Fulton County are the same as those from Atkinson. To destinations on the Rock Island Railroad in northern Illinois, the Atkinson rates are generally less than [fol. 375] the rates from Fulton County. Rates from Atkinson to points in eastern Iowa within a radius of 100 miles from Davenport are less than the rates from Fulton County to the same destinations and are generally the same as the rates from Alpha. The average distance from Atkinson to the northern Illinois representative suspended destinations to which through rates are published is approximately 32 miles less than the distance from Fulton County to these destinations.

The mine at Atkinson does, as previously stated, ship the majority of its coal to the Tri-Cities and other points

on the Mississippi River, also to points in eastern Iowa and to cement mills at LaSalle, Illinois. The greater part of its production is fine or slack coal, suitable for industrial purposes.

Under the conditions that exist, in view of the facts I have related, it appears that the rate adjustment from these origin points which the carriers have maintained in the past, and which they propose to maintain in the future, is logical and sound. Robertson's Exhibit No. 4, Section 3, shows the level of the suspended rates from these origins to representative suspended destinations, as compared with the Holmes & Hallowell scale rate, and is generally lower than the level of the present rates to the representative comparative destinations shown in Section 4 of the same exhibit.

Witness Hamilton has testified regarding the level of the [fol. 376] rates from Illinois districts to Chicago and has given details as to the necessity of maintaining them on a depressed basis; the principal reason being competition of eastern coal transported by rail and lake and all rail. In the territory west of Chicago, the competition on eastern coal slackens as the rates increase, and therefore the necessity of continuing low rates from the Illinois groups decreases. To the territory in northern Illinois involved in this proceeding, the rates on eastern coal range from 75 cents to $1.10 per ton higher than the rates to Chicago.

There is no water competition in the territory and truck competition is not severe. There is not, in my opinion, any reason why the rates from the northern Illinois, Fulton, Peoria and other origin points from which the hauls are comparatively short, should not be maintained on a level equal to or higher than that proposed. The rates from Fulton County to points like Rockford, Freeport and Dixon, which are from 70.5 per cent to 87.1 per cent of the Holmes & Hallowell scale cannot, in my opinion, be properly considered unreasonable. This territory should not be rated lower than that in Ohio, where the Interstate Commerce Commission prescribed rates that range from 83 per cent to 106 per cent.

Mr. Morgan: I object, unless the witness goes on to explain comparable conditions between the two territories. There is nothing shown in the record that would indicate a

[fol. 377] comparative condition in any respect between Illinois rates in question and the Ohio rates.

Mr. McElroy: Perhaps that will be developed as the testimony goes along.

Mr. Morgan: I raise the question because it is a continuous statement and if it is to be developed and explained and demonstrated to be comparative, that is another question.

Exam. Trezise: Well, you may cross-examine to determine why he says that, to see whether there is any reason. Maybe there is no reason for the statement at all, I don't know. I do know but, then, I don't want it to go on the record.

You may continue.

The Witness: Range from 83 to 106 per cent of the Holmes & Hallowell scale. I. C. C. Docket 25566, 192 I. C. C. 413; Ohio 13th Section case involving rates from mines in Ohio to destinations in the same state.

The Interstate Commerce Commission prescribed rates from Indiana mines to destinations in eastern Illinois for a comparatively short haul which are approximately 85 per cent of the Holmes & Hallowell scale; I. C. C. Docket 23922, 190 I. C. C. 743.

The Illinois Commission and also the Interstate Commerce Commission prescribed rates in Illinois for hauls up to 100 miles, which are slightly higher than 85 per cent of the Holmes & Hallowell scale, in Illinois Docket 19591, I. C. C. Docket 23130; 182 I. C. C. 537. The present rate [fol. 378] from Fulton County to Dixon of $1.50 is 84 per cent of the Holmes & Hallowell scale and the proposed rate of $1.55 is 87 per cent; the distance, 123 miles.

The docket 23922 scale rate for this distance is $1.55, or the same as that proposed. Docket 19591 scale, extended beyond 100 miles, at a rate of 7 cents per ten-mile block, produces a rate of $1.53. The rates prescribed by the Interstate Commerce Commission in the Ohio 13th Section case for this distance are approximately $1.78, Ex Parte 115 increase included.

The rate to Dixon complained of in the Dixon Chamber of Commerce versus C. & N. W. case, I. C. C. Docket 31295, should not be measured by depressed rates such as those from Fulton County to Linwood, Iowa, or Clinton, Iowa, which are 73½ per cent and 72 per cent of the H. & H. scale.

respectively. Rates from Fulton County to Linwood and Davenport were prescribed by the Interstate Commerce Commission in Docket 23130, when there were only 6 points of origin in the Fulton County district and the average distance was 98 miles. Today there are 27 points of origin in the Fulton County district and the average distance is 116 miles.

The rates to Clinton are held down by the rate to Davenport; Clinton, until recently, being intermediate to Davenport via other routes. The Interstate Commerce Commission prescribed rates to Iowa from Fulton County in [fol. 379] the Midland Electric case, I. C. C. Docket 26558, 232 I. C. C. 5, which are 90 per cent of the Holmes & Halloweil scale and in doing so refrained from prescribing specific rates to Linwood, Davenport and Clinton, because the then present rates were lowered.

I have another exhibit, No. 10, which is a statement showing the number of tons of coal forwarded from mines in Indiana, Illinois and western Kentucky during a ten-year period, January 1, 1932, to December 31, 1941; the figures being indicated upon the annual basis. At various destinations——

By Mr. Morgan:

Q. Off the record, could you explain that first caption on the second column there, "Except as otherwise shown." What does that refer to on Exhibit 10, on the first page?

By Mr. McElroy:

Q. You have got it headed "To Chicago," and then the first caption, "Except as otherwise shown." What is that "Except as otherwise shown"?

A. Well, you will notice at the top there it says to Illinois, and then they name Chicago and the Chicago district and the Peoria-Pekin district, and then columns B, C and D it shows tonnage to other destinations in Illinois.

Q. What other destinations are they?

A. Other than Chicago, Peoria-Pekin.

Q. All points in Illinois or are they selected points?

A. East St. Louis. East St. Louis is shown with St. Louis, Missouri.

The statement consists of ten pages, and the authority [fol. 380] for the figures contained therein is shown at

the bottom of the title page, page 1. It shows a separation of the commercial tonnage shipped to destinations in Illinois, Iowa, Missouri and Nebraska, and the tonnage for the destination territory involved in this proceeding is shown under caption "To Illinois, except — otherwise shown."

Mr. Wilkinson: Just a minute.

By Mr. Wilkinson:

Q. Do you mean as shown there, or is it included within that?

A. I mean it is included within that, Mr. Wilkinson; column B, C and D of each page. Tonnage from Atkinson, Illinois, is included in the movement from northern Illinois. A substantial part of the movement from the Wilmington, Illinois, mine is not shown in this report, as shipments handled by the Alton Railroad are not reported to the Association.

By Mr. Cardy:

Q. Those figures are shown somewhere else, are they not, Mr. Nelson, Wilmington mine, some other exhibit?

A. In my other exhibit I have shown the production——

Q. Yes.

A. In the commercial tonnage.

Included in the tonnage from mines in the Springfield district to Illinois destinations not otherwise specified is a large movement from mines on the C. & I. N. Railroad for the Commonwealth Edison Company plant at Chicago, [fol. 381] which is shipped by rail to Havana, Illinois, and by barge line beyond. In 1941 it amounted to approximately 2,000,000 tons. The statement does not include a large movement from Fulton County mines to Chicago, Ottawa, LaSalle, Illinois, Linwood and Dubuque, Iowa, which is handled by barge lines.

By Exam. Trezise:

Q. And does the tonnage to Chicago include the amount that moved via barge line also?

A. No, sir, it does not.

Q. It does not?

A. The barge tonnage that I mentioned a few minutes ago is included in B, C and D.

By Mr. McElroy:

Q. The figures except as otherwise shown?

A. Yes, except as otherwise shown; because the destination, in so far as the rail movement is concerned, is Havana, Illinois.

Mr. Vesey: May I ask just one question right there, just in point of fact?

Exam. Trezise: Yes, sir.

By Mr. Vesey:

Q. You mean, of course, by that, in so far as your shipments of coal are concerned?

A. That is from Springfield.

My last exhibit is a statement consisting of one page, Exhibit No. 11. It shows the average level of the suspended rates from all destinations in Illinois, Indiana and Western Kentucky to representative destinations in northern Illinois compared with the average level of present [fol. 382] rates from the same origin districts to representative points in the surrounding territory. It indicates that the present rate to comparative representative points, notwithstanding the fact that some of them, such as those to Chicago, Rock Island, Moline, Davenport and Clinton should properly be classified as depressed, are higher in level than the proposed rates to the representative suspended points.

This statement is a recapitulation of the information shown in Robertson's Exhibits Nos. 3 and 4. The method of ascertaining the average levels is explained at the bottom of the page. The origin districts are listed in the first column and the names of the representative suspended points are shown at the tops of columns 1, 2, 3, 4, 5, 6 and 7. The names of the representative comparative points are shown at the top of columns 8 to 14, inclusive.

By Mr. McElroy:

Q. These figures are not weighted average distances?

A. No, sir. Column No. 1 gives the total number of origins used from each group on the lump and fine coal regions. Column No. 2 is the total rate of lump and fine. Column No. 3 shows the total distance; column No. 4, the average suspended rate; column No. 5, the average dis-

tance; column No. 6, the Holmes & Hallowell scale for the average distance. Column No. 7 shows the percent that the average suspended rate is of the H. & H. scale rate that obtained. Columns Nos. 8 to 14, inclusive, contain [fol. 383] similar information with respect to present rates from these origins to the representative comparative points.

In all instances, with the exception of rates from Atkinson and Peoria, the suspended rates, or perhaps I should say the proposed rates are a lower level than the present rates to the comparative points. To illustrate, the rates from Wilmington, which is the point in the northern Illinois district that was selected for this comparison, it being the one that ships the majority of the rail coal, the average rate from Wilmington to the representative suspended points, proposed rate, is 79.1 per cent of the Holmes & Hallowell scale. The average present rate to the comparative points is 79.6 per cent, lump coal, and 77.9 per cent, fine coal.

By Mr. Morgan:

Q. Does that appear on that exhibit?

A. I beg your pardon, I got in the wrong column. The present rates to the comparative points for Wilmington, lump coal, are 83.3 per cent and on fine coal, 81.8 per cent. From the Fulton County district, the proposed rates are 72.1 per cent compared with the present rates to the comparative points of 79.6 per cent on lump coal and 77.9 per cent on fine coal.

The proposed rates from southern Illinois average 62.4 percent compared with the level of the present rates to the comparative points of 74.4 per cent on lump coal and 69 per cent on fine coal.

[fols. 384-385] From the Princeton-Clinton district, the proposed rates are 71.7 percent of the Holmes & Hallowell scale. The present rates to the representative comparative points are 76.4 per cent on lump coal and 74.8 per cent on fine coal. From the Princeton district, the proposed rates are 62.9 per cent of the scale compared to 69.6 per cent, the present rates on lump coal to comparative points, and 68½ per cent, present rates on fine coal to the comparative points. From the Booneville district, the proposed rates are 59.3 per cent of the Holmes & Hallowell

scale and the present rates from the Booneville district to the comparative points are 64.5 per cent of the scale on lump coal and 63.7 per cent on fine coal.

By Exam. Trezise:

Q. That is all on the exhibit there, is it not, Mr. Nelson?

A. Yes.

Q. Is there something else you want to say about it?

A. The only thing I want to say is to direct attention to the lower level of the rates that have been proposed, particularly from the lower Indiana districts, the Booneville rates are 59.3 per cent of the scale, the lowest rates we have proposed.

Q. That Booneville seems to be a little out of line from the others, doesn't it?

A. It appears to be. However, we are proposing to maintain the present adjustment so far as the rate relationship is concerned, so far as we can do so.

[fol. 386] The Witness: The rates which the carriers propose to establish and which are involved in this proceeding constitute an adjustment which is more in harmony with the rates from the same district to the surrounding territory, and if permitted to take effect will tend to eliminate, at least to some extent, the menace that these rates are to the general adjustment in this territory.

It is my belief, based on my knowledge of conditions that exist, which has been gained from years of experience in handling coal traffic, that the higher rates which the carriers have proposed will not jeopardize the interests of the Illinois, Indiana and western Kentucky operators or the dealers or consumers of coal, or cause any loss of traffic to other forms of competition for the carriers, but, on the other hand, will permit the carriers to obtain some additional revenue on traffic they are now transporting, and avoid an unnecessary sacrifice of revenue which would result if a general reduction in rates to points in the surrounding territory was made.

That is all I have on direct, except Witness Hamilton mentioned the fact that there had been no increase in the rates from the Fulton County district to Sterling, Illinois. This was caused by the necessity of holding the rate to Clinton, Iowa, as maximum. In other words, to avoid a violation of provisions of Section 4 of the Interstate Com-

[fol. 387] merce Act and Section 40 of the Illinois Commerce Commission Law.

Now, in the majority of instances where we—in fact, I think all instances where we have followed a uniform procedure in proposing increased rates, I mean by that a uniform increase in rates is because we could not do so without Fourth Section violations.

Mr. Vesey: Could that statement be read back, please?

(Record read.)

By Mr. Biaett:

Q. Mr. Nelson, is the reason why the—will you tell the Commission the reason why the carriers are proposing the increased rates at this time.

A. Well, we think that the rates are too low and are not bearing their proper share of the transportation burden, that they should be increased to the proposed level, which is more in harmony with the level of the rates to the surrounding territory. There is more or less competition at border points with a population, industrial development, business growth; and when this competition exists, the consumers who pay the higher rates must absorb the difference in those rates, the difference between the rates they pay and those that they pay in the territory that is involved.

Q. Well, Mr. Nelson, is there an outstanding order which requires you to either increase the rates to Rockford or reduce the rates to Beloit?

A. That is true.

[fols. 388-389] Q. And if you increase the rates to Rockford, is it also necessary, in order to comply with Section 4 of the Interstate Commerce Act and Section 40 of the Illinois Public Utilities Act to increase rates to these other destinations in northern Illinois?

Mr. Morgan: That is a legal question.

Mr. Stadell: It is a legal question. It is very leading.

Mr. Biaett: Well, Mr. Examiner——

Exam. Trezise: It is necessary to conform to the law.

Mr. Stadell: They have an alternative.

Exam. Trezise: They have an alternative; that is the law. Now, what was your question, Mr. Biaett?

By Mr. Biaett:

Q. My question was, could we comply with the order by increasing the rates to Rockford, Illinois, or is it necessary to increase the rates to numerous other destinations in northern Illinois in order to avoid Fourth and Fortieth Section departures?

A. That is correct. Many of the rates to points beyond Rockford in this territory apply via Rockford, and therefore to increase the Rockford rate, you would have a violation if you didn't increase the rates to the points beyond.

. . . . . .

[fol. 390] By Mr. Biaett:

Q. Mr. Nelson, are you familiar with the conditions in the northern Illinois points under suspension in this proceedings which surround the transportation of coal from the Illinois groups, the Indiana groups and western Kentucky?

A. Generally, yes.

Mr. Stadell: Now, what conditions——

Exam. Trezise: So far as they are affected by this 4th [fol. 391] Section provision and the provisions that might apply with respect to that. You are not talking about transportation conditions from a physical standpoint, are you?

Mr. Biaett: No, sir.

Mr. Stadell: That is a necessary part of the basis of his question; the physical manner in which these railroads operate and the routes over which they operate and the points through which they operate in reaching these destinations.

Exam. Trezise: Oh, the Examiner did not have that in mind. The Examiner had in mind whether or not he was asking what the difficulties of transportation were. Why, certainly you may ask him how the railroads run and where they compete, if that is what you are driving at. He is an expert on that.

Mr. Biaett: Well, that is all that I intended my question to include. That is from a rate and tariff standpoint.

Exam. Trezise: He knows that, do you not?

The Witness: Sure.

By Exam. Trezise:

Q. That is your business, isn't it?
A. Yes, sir, correct.

Exam. Trezise: But we are not going into difficulties of transportation over the mountains or through the valley.

By Mr. Biaett:

Q. Mr. Nelson, have the carriers filed petitions to secure relief from Section 4 of the Interstate Commerce Act and Section 40 of the Illinois Public Utilities Act in order to hold higher rates at Rockford than at other points in this [fol. 392] territory?
A. They have not.

Mr. Biaett: That will conclude.
Exam. Trezise: That is all?
Mr. Biaett: Yes, sir.

By Exam. Trezise:

Q. Mr. Nelson, just to have it a little clearer about this Exhibit 11, before cross examination, you have that exhibit divided into two sections, one, "To representative suspended points" and the other, "To representative comparative points," and in connection with that you refer to the Indiana-Illinois scale, in justification of the rates under that section, called the representative suspended points. That is true, isn't it?
A. I referred only to the Holmes & Hallowell scale, Mr. Examiner.
Q. You referred to the Indiana-Illinois scale and gave the docket number, which is—what is it, 292——
A. 23922.
Q. Yes.
A. I referred to that scale and I discussed rates from the Fulton County district to northern Illinois destinations.
Q. That is the point I am trying to get at.
A. And I stated, Mr. Examiner, that the Commission had prescribed this scale from Indiana mines to destinations in eastern Illinois for comparatively short hauls.
[fol. 393] Q. Well, would you use that scale any farther than Rockford? You spoke of Beloit, you know. I am trying to find out whether you would justify increases to Beloit by using that scale, the Indiana-Illinois scale. I just want

your view on it. I was wondering how you could separate the representative suspended points and then, over here, representative comparative points and in the comparative points you have Beloit?

A. Well, there are no increases in the rates from the Illinois points of origin to Beloit. There are some increases in rates from Indiana to Beloit. We have shown Beloit as a comparative point.

Q. You are not undertaking to cite the Indiana-Illinois scale in justification of the proposed rates to Beloit, is that right?

A. I think that would have been a proper scale to use. The rates we have proposed to Beloit are generally lower than that scale. I mentioned that scale to show that the Interstate Commerce Commission had prescribed rates into Illinois or into this territory, northern Illinois territory, which were approximately 85 per cent of the Holmes & Hallowell scale.

By Mr. Biaett:

Q. That scale applies for interstate transportation service?

A. Yes, sir.

Q. From Indiana to Illinois?

[fol. 394] A. That is correct.

Q. Isn't that correct?

A. Yes, sir.

Q. And you measured the intrastate rates from Fulton County to northern Illinois destinations by that scale, prescribed for interstate transportation?

A. That is correct.

Mr. Biaett: Pardon the interruption, Mr. Examiner.

Exam. Trezise: And you say that that Indiana-Illinois scale is higher? Did you say higher than the rate proposed to Beloit from Indiana? That is what you said.

I think I will not pursue that any more, but I would like you to think about that, Mr. Nelson. That has been quite a point in a number of these cases, and inasmuch as you intimated here that you might use that Indiana-Illinois scale up into Wisconsin, I was about to ask you, where would it stop?

The Witness: The rates that——

Mr. Kaier: Is your point, Mr. Examiner, how far could the scale be projected? As I recall it, it is a rather short point scale.

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: We will have a short recess at this time, before cross examination.

[fol. 395] (A short recess was taken.)

Exam. Trezise: Are we ready for cross examination?

Mr. Wilkinson: I have got a few questions I want to ask.

Exam. Trezise: All right, Mr. Wilkinson.

Cross-examination.

By Mr. Wilkinson:

Q. Mr. Nelson, did you ascertain from your direct examination that you do not consider Fulton County, Peoria, northern Illinois, as a part of the differential adjustment into the destination territory involved?

A. I stated that the rates from these districts to the destination territory were not related to the rates from districts in the southern part of the state, such as southern Illinois or Belleville, Springfield; no uniform relationship.

Q. Whereas, for the other districts in Illinois, there is a uniform relationship, based on differentials under southern Illinois?

A. Yes, sir.

Q. That are constant to all of the points of destination in this territory?

A. That is correct.

Q. Now, if that is true, Mr. Nelson, why did the carriers exclude, in their exhibits 3 to 5, inclusive, or 3 and 4, northern Illinois from a comparison of the whole and into Peoria [fol. 396] and Fulton County?

A. Well, the rates from northern Illinois vary. There is a variation in rates, and it wasn't possible, at least we couldn't find a way to do it properly, to show them as a group; so we showed them separately.

Q. You mean they vary as to a given destination?

A. Yes, sometimes, and they were not uniform.

Q. Well, is that not also true of the Peoria-Fulton County rates?

A. Well, the rates from Fulton County to these destinations are usually the same as—rates from all mines in the Fulton County district to a given destination; and the same is true with the rates from Peoria or the rates from Rushville, the rates from Fort Atkinson and Alpha, Victoria; but from the northern Illinois group, if you classify it as a group, you have got different rates from the various mines to some of these destinations. Therefore, you couldn't make the same kind of comparison.

By Exam. Trezise:

Q. Are you undertaking to distinguish there between short haul traffic and, well, you might call long haul traffic? Is that what you are driving at, when you say one is grouped and the other has individual rates?

A. That is correct. The rates from the districts we have been discussing, I think, are classed as being short haul rates.

[fol. 397] Q. Ordinarily, short haul rates do vary, based upon distance; that is a fact, is it not?

A. That is right.

Q. And is that the sort of distinction you had in mind here when you were describing the rate situation?

A. Well, distance has a bearing on the rate. What I was bringing out was the fact that we could not compare rates from the northern Illinois group as a whole because they were not uniform.

Exam. Trezise: Go ahead.

By Mr. Wilkinson:

Q. And for this purpose, you do not consider Alpha, Fort Atkinson, Victoria and Rushville as part of the Fulton County group?

A. No, sir.

Q. Is that correct?

A. That is right.

Q. In your exhibits and also in the exhibits introduced by Mr. Robertson you show from these northern—Fulton-Peoria and northern Illinois origins an interstate rate as well as an intrastate rate. Now, so far as Fulton-Peoria, northern Illinois is concerned, is there any significance in the interstate rate, as far as this case is concerned?

A. Well, the interstate rate was maintained by some of the roads, because they thought it was a more nearly proper rate, and it is usually a paper rate. It doesn't move any traffic.

[fol. 398] Q. As a matter of fact, no traffic moves from a mine in northern Illinois or Fulton County to any destinations in the involved territory within Illinois on an interstate rate, does it?

A. That is right.

Q. You have used as one of the comparative points, both in your exhibit and in the exhibits introduced by Mr. Robertson, Chicago, Illinois.

A. Yes, sir.

Q. Do you consider Chicago comparable with the points of destination involved here, the suspended points?

A. No, I do not.

Q. Why did you include it, then, in your group of comparable destinations?

A. We wanted to show the level of the rates to Chicago.

Q. Well, if it is not comparable——

A. Because Chicago has been—Chicago rates have been mentioned by the Commission in their decisions regarding the rates to this territory. It is stated that the rates to Chicago had some effect on the rates to this territory. We wanted to show the level of the Chicago rates.

Q. You just wanted to show it but you, yourself, don't think it is a comparable rate, is that it?

A. I think the rates to this territory can properly be higher than the rates to Chicago. The rates to Chicago [fol. 399] should be higher, if it was possible to make them that way.

By Exam. Trezise:

Q. And do you mean relatively higher, as the distance increases from Chicago?

A. Yes, sir. As the distance increases, the competition decreases. Therefore, the necessity of maintaining a low level of rates in this territory doesn't exist as the same necessity as causes the maintenance of the rates to Chicago.

By Mr. McElroy:

Q. Does the distance of the Burlington increase over the Chicago distance to the affected territory?

A. Well, I was talking about the rates from the East, when I said the rates increase as the distance increases.

Exam. Trezise: Proceed, Mr. Wilkinson.

By Mr. Wilkinson:

Q. Well, the rates from the East are not at all involved here, are they, Mr. Nelson?

A. Oh, no, but——

Q. Just taking the rates from Illinois, Indiana and west Kentucky, and leaving out the rates from the East, is Chicago comparable to Rockford, or consideration of the rates that we have under consideration here or in issue here?

A. I consider the rates to Chicago depressed rates.

Q. Oh, yes. Well, you said they are all depressed rates. Assuming that you consider all of these rates depressed, including the rate to Chicago, is it comparable?

A. Comparable with the rates that we have proposed? Or comparable with the present rates, do you mean?

[fol. 400] A. Well, comparable to either the proposed rates or the present rates or service or distance?

By Exam. Trezise:

Q. Well, you think the rate to Chicago is depressed than the others are depressed, is that right?

Mr. Wilkinson: I thought that would be the answer from the witness.

Exam. Trezise: I asked him that to help you out, Mr. Wilkinson.

The Witness: Mr. Wilkinson, the rates to Chicago are slightly higher in level than the general rates we are proposing into this territory.

By Mr. Wilkinson:

Q. And that is why you used it as a comparable point, is that right?

A. It illustrated the fact that the proposed rates are low in level.

Q. Now, you introduced as your exhibit, Exhibit No. 10, showing over a period of 10 years shipments from the various groups in Illinois, Indiana and I believe west Kentucky, to certain cities in Illinois and Iowa, and to the balance of

the State of Illinois, other than the cities shown, the balance of the State of Iowa, other than the cities shown. Could you explain to me the significance of that exhibit in relation to the rates to this area in northern Illinois that is involved in this case?

A. My purpose in submitting this exhibit was to show [fol. 401] the volume of the movement to this general territory and the trend of the traffic.

Q. Well, so far as this exhibit shows, either alone or in conjunction with anything else that has been introduced here, is there any way of telling whether any of the shipments which you show, as made from Danville, Illinois, if one pound of that coal went to any destination within the territory in northern Illinois involved in this case?

A. There is nothing in this exhibit that shows any specific destination.

Q. Well, to show that any of it went there.

A. If there was a movement from Danville to a point in northern Illinois involved in this case, if would be in the tonnage that I have reported.

Q. Yes, but so far as your evidence or the evidence of the witnesses who have preceded you is concerned, all of the coal that appears to have been shipped from Danville in 1941, 309,056 tons, may well have gone to destinations quite always removed from the territory here involved, is that correct?

A. That is possible. But if there was a movement to this territory, it would be included in these figures.

Q. And that same statement is true with respect to every origin group you have shown in your Exhibit No. 10?

A. Yes, sir, but there is another statement in Robertson's exhibit that does show the movement to some of the repre- [fol. 402] sentative destinations.

Q. That is to seven of the twelve representative suspended destinations you have shown?

A. Yes, sir, and that shows the movement classified as to origin districts for the year 1941 and the first six months of 1942.

Q. You spoke about something being a menace to the general adjustment in this territory. Now, what territory did you refer to in that statement?

A. The surrounding territory.

Q. The surrounding territory?

A. In Illinois and Wisconsin.

Q. You included in this territory Illinois, Wisconsin, Iowa, southeastern Minnesota?

A. That is a little far remote.

Q. That is far removed?

A. I mean the surrounding territory.

Q. All right. Now, what is this adjustment that you speak of, Mr. Nelson?

A. The low level of the present rates to the——

Q. Well, does that adjustment, as you use the word, include within it the definition, adjustment as between the groups in Illinois and the groups in Indiana to southern Wisconsin?

A. Well, I had reference principally to the level of the rates.

Q. To the level of the rates?

[fol. 403] A. The carriers are endeavoring to perpetuate the differential adjustment to this territory so far as they can.

Q. Well, now, the differential adjustment in southern Wisconsin and eastern Iowa and to Illinois, beyond this immediate territory, is not the differential adjustment, or the differences in rates, that now exist at Rockford, is it?

A. Not in all cases, no sir.

Q. Well, any cases?

A. There might be the same difference in rates, if that is what you mean.

Q. Now, Mr. Nelson, you well know, do you not, as between Brazil-Clinton, Indiana, and southern Illinois, in Illinois, to practically all points in southern Wisconsin, to practically all points in eastern Iowa, there is a difference of Brazil-Clinton over southern Illinois of 30 cents per ton in the rates? You know that, do you not?

A. Well, to many destinations the rates from Brazil are 30 cents less than southern Illinois, and they are on the same basis as Springfield; but not to all destinations, Mr. Wilkinson.

Q. Well, we will say to about 98 per cent of the destinations.

A. I wouldn't want to make any guesses as to the percentage.

Q. Now, I refer——

Exam. Trezise: Mr. Wilkinson, the relationship that you [fol. 404] are talking about in differential is relationship between Indiana and Illinois?

Mr. Wilkinson: That is right.

Exam. Trezise: And not between the Indiana groups themselves, is that right?

Mr. Wilkinson: That is right.

Exam. Trezise: That is right. Thank you.

Mr. Wilkinson: I was talking and I just used the two base groups of the two states.

Exam. Trezise: Proceed.

By Mr. Wilkinson:

Q. Now, at Rockford, except for the rates from mines on the Milwaukee, the differential as between Brazil-Clinton and southern Illinois is not 30 cents, is it, under the present rates?

A. At Rockford the rates from southern Illinois, $2.10, and at Springfield it is one dollar——

Q. No, I asked regarding Brazil-Clinton and southern Illinois, Mr. Nelson. I didn't mention Springfield.

A. The rates from Brazil-Clinton on the Milwaukee Railroad to Rockford, $1.80, and from mines on other railroads, $1.97.

Q. All right. Now, is it not a fact that whereas generally in southern Wisconsin and eastern Iowa, the differential, Brazil-Clinton under southern Illinois is 30 cents, that Rockford, with the exception of those mines on the Milwaukee, that the present differential is but 13 cents?

[fol. 405] A. Well, the difference between the rates from Brazil-Clinton mines on roads other than Milwaukee of $1.97 and the present rate from Princeton of $2.09, of course, is not 30 cents.

Q. I didn't ask you about Princeton, did I, Mr. Nelson?

A. I thought you said Princeton.

Q. No, I said southern Illinois to Rockford.

A. You want to know the difference between the Brazil-Clinton rate to Rockford——

Q. Yes.

A. Compared with southern Illinois,

Q. Yes.

Exam. Trezise: Well, that has been answered, hasn't it, Mr. Wilkinson?

Mr. Wilkinson: He hasn't answered it yet.

The Witness: Well, the difference between the Brazil-Clinton rate from mines on the Milwaukee and the rate from southern Illinois is 30 cents.

By Mr. Wilkinson:

Q. Yes, sir.

A. And from other mines in Indiana, it is 23 cents.

By Exam. Trezise:

Q. 13 cents?

A. 13 cents.

Mr. Wilkinson: Yes.

By Mr. Wilkinson:

Q. Now, is that a part of this general adjustment that you speak of that you are hoping to maintain and extend?

[fol. 406] A. We are trying to perpetuate the present adjustment, Mr. Wilkinson, and that seems to be—if the present adjustment is on the proper basis, then we are trying to perpetuate it in a proper manner.

Q. If it is on an improper basis, are you still trying to perpetuate it?

A. We are not trying to change it here.

Q. And you are not expressing any opinion, then, as to whether that adjustment of 13 cents, Brazil-Clinton under southern Illinois, to Rockford, is proper or improper, is that correct?

A. I see nothing wrong with the present adjustment, Mr. Wilkinson.

Q. You think that is proper?

By Exam. Trezise:

Q. Right there, wouldn't it be well to say, if you know why, why there should be that differential as to one railroad and a different differential as to the other railroads? Do you know about that, as to whether there is a justification for the differential of 30 cents with one railroad and 13 cents with the other? It seems to me quite a difference.

A. I know there is a difference, Mr. Examiner; but it has been maintained that way for many years.

Exam. Trezise: Proceed, Mr. Wilkinson.

By Mr. Wilkinson:

Q. How many years?

A. I don't know.

[fol. 407] Q. Well, don't you know the history of this rate, Mr. Nelson, to know that prior to 1930, when the Illinois Commerce Commission ordered a reduction in the rate from Illinois to Rockford, that the same differential of 30 cents applied from all mines in the Brazil-Clinton district under southern Illinois and had for many years prior to 1930?

A. 1930?

Q. Yes, sir.

A. I couldn't say. It has been this way for a long time. I do know that the Illinois Commerce Commission order reduced the rates from Illinois to Rockford 17 cents. As a result of that order, the Milwaukee Railroad reduced their rates from the Brazil-Clinton district to Rockford 17 cents.

By Exam. Trezise:

Q. Do you think the differential ought to be the same? Can't we approach this subject and get an answer on that? Have you sufficient facts in mind to enable you to give us an answer, why they have a different differential by some of the railroads and a different one on the others?

A. Well, Mr. Examiner, I don't know that I want to express an opinion on that.

Exam. Trezise: All right. Thank you.

By Mr. Wilkinson:

Q. Now, do you know of any reason, Mr. Nelson, why the differential as between Brazil-Clinton and southern Illinois at the compared point of Madison, which you used, should be 30 cents, Brazil-Clinton under southern Illinois, on all [fol. 408] railroads; whereas at Rockford, you are proposing to maintain a differential of 13 cents on all carriers other than the Milwaukee, and 30 cents on the Milwaukee?

Mr. Vesey: Off the record, if the Examiner please.

Exam. Trezise: Yes.

(Discussion outside the record.)

Exam. Trezise: Back on the record. The Examiner didn't want to press his question, inasmuch as he said that

he didn't want to express an opinion on it. If that is the conclusion that the witnesses want to give to the Interstate Commerce Commission, why, the Commission will handle it in the way it ought to be handled. I have no more questions on that.

Mr. Wilkinson: I was satisfied to leave it that way, that he didn't care to answer the direct question.

Exam. Trezise: You asked him another question.

Mr. Wilkinson: And I have asked him another question.

The Witness: The rates from Brazil-Clinton and Princeton or, I mean, Springfield to Madison, Wisconsin, are 30 cents less than those from southern Illinois.

By Mr. Wilkinson:

Q. I know they are. That wasn't my question, Mr. Nelson.

A. What was your question?

Mr. Wilkinson: Will you read the question to the witness, please, Miss Reporter.

(Pending question read.)

[fol. 409] The Witness: At Rockford we are proposing to maintain the present adjustment. From Milwaukee mines, the rate from Brazil-Clinton is 30 cents less than the rate from Illinois.

By Mr. Wilkinson:

Q. Is that the only reason that you can think of for having that anomoly of a narrower differential in a shorter haul than you have in a longer haul? Is your proposal to maintain the existing relationship at Rockford?

A. That is what we are endeavoring to do.

Q. I see, and that is the only reason you have to sustain that anomoly?

A. I don't believe I understand your question.

Q. Well, is the only reason that you can think of, as you sit there on that stand, for maintaining a differential as between the mines in Brazil-Clinton under southern Illinois of 13 cents at Rockford, while you have a differential of 30 cents at Madison, is the desire of the carriers to maintain at Rockford the existing rate relationship?

A. That is right.

By Exam. Trezise:

Q. Well, then, in that connection, isn't it ordinarily true in the establishment of differentials that a differential may even be greater to a shorter-distant point than to a farther distant point?

A. The differential be greater to a shorter distant point than to a further distant point?

Q. Yes, sir.

[fol. 410] A. Well, that might be. It might be less. There is not any uniform——

Q. I did not mean to complicate the situation or have any rabbits up my sleeve. Ordinarily, where the distances increase, the differential naturally decreases in making differential rates, isn't that true?

A. I think that is true, yes.

Q. At least they do not do the opposite, as in the illustration given by Mr. Wilkinson.

Mr. Wilkinson: Mr. Nelson——

Mr. Vesey: There was no answer to that question of the Examiner's.

The Witness: I didn't think it required an answer. What is it you want me to answer, Mr. Examiner?

Mr. Vesey: I am going to insist on an answer, if the answer——

Exam. Trezise: I will just withdraw the last question and let the other answers stand. I think you have answered my question, Mr. Nelson, and thank you.

By Mr. Wilkinson:

Q. Mr. Nelson, it being usual, as you stated to the Examiner, that the differentials for a shorter haul, if they differ at all from those for a longer haul be larger, why is it that you are now proposing for the first time to narrow the differential between the mines in the Brazil-Clinton district in [fol. 411] Indiana on roads other than the Milwaukee and southern Illinois from the existing differential of 30 cents to 13 cents?

A. We are not narrowing it.

Q. You are not narrowing it?

A. That is what it is today.

Q. Is it? Will you please look at the rates from southern Illinois to Beloit, from Brazil-Clinton to Beloit, in the

proper exhibit that Mr. Robertson has introduced here, and tell me if it is 13 cents or 30 cents today?

A. You were talking about the rates to Rockford.

Q. No, my last question was Beloit.

A. Oh, I beg your pardon. Well, we have an order to comply with in publishing rates to Beloit.

Q. Well, that order didn't say anything about reducing the differentials, did it, as between Brazil-Clinton and southern Illinois?

A. The proposed rate to Rockford is $1.95 from Milwaukee mines.

Q. $1.95?

A. Yes, sir.

By Mr. Biaett:

Q. You mean to Beloit, Mr. Nelson?

A. To Rockford, $1.95; and to Beloit, it is $2.10.

Mr. Wilkinson: Yes.

The Witness: A difference of 15 cents.

Mr. Wilkinson: All right.

The Witness: The proposed rate from the mines on other [fol. 412] roads in the Clinton-Brazil district to Rockford is $2.12, and to Beloit, $2.27, or 15 cents higher.

Mr. Wilkinson: All right.

The Witness: That is what we are endeavoring to do, is to increase the rates to Rockford 15 cents a ton and then observe a 15 cent spread in establishing rates to Beloit.

By Mr. Wilkinson:

Q. Mr. Nelson, I believe you testified that for a number of years you were the coal traffic manager of the C. B. & Q. Railroad and that in more recent years you are assistant fuel traffic manager, or fuel traffic manager?

A. That is right.

Q. Now, between those two positions you have been dealing with coal rates for something over seven years?

A. Correct.

Q. Now, you have heard, in the course of that seven years, about the relationship and differential relationship between the mine groups in Illinois?

A. Naturally.

Q. And you have heard about the relationship between the mine groups in Illinois on the one hand and the mine groups in Indiana on the other?

A. Yes, sir.

Q. Haven't you?

A. Yes, sir.

Q. And you profess to know something of that relationship?

[fol. 413] A. Yes, sir.

Q. Now, Mr. Nelson, with your knowledge of that relationship, can you answer why the carriers at this time chose to disrupt the existing differential as between Brazil-Clinton on the one hand and southern Illinois on the other of 30 cents per ton by reducing that differential to 13 cents per ton?

A. Well, I explained to you——

Q. At Beloit?

A. I explained to you why we did it. We are trying to maintain——

Q. Now, tell me the justification, from a traffic or transportation and a competitive situation that warrants your doing it.

A. The justification is the fact that we want to maintain higher rates at Rockford and we proposed increases in the Rockford rates of 15 cents a ton and applied the Commission's order in the Beloit case by increasing the rates or making the Beloit rates 15 cents higher than the rates to Rockford.

By Exam. Trezise:

Q. Well, isn't it a fact, then, in answer to his question, that you regarded the order of the Commission with respect to this 15 cent differential between Rockford and Beloit more sacred than the existing differential that has been maintained between southern—is it southern Illinois and Brazil-Clinton?

Mr. Wilkinson: That is right.

[fol. 414] The Witness: Mr. Examiner, you couldn't comply with the order in the Beloit case without disturbing the differential at either Beloit or Rockford, one of the two.

Exam. Trezise: That is correct, and that is the reason you did it, isn't it?

Mr. Wilkinson: Now, I just want to find out:

By Mr. Wilkinson:

Q. Mr. Nelson, were you with the C. B. & Q. Railroad, did you have anything to do with the publication of rates when the first order in the Fairbanks-Morse case was complied with by the carriers?

A. I remember when it was published, yes.

Q. Did you have anything to do with the publication of the rates to Beloit under that first order?

A. I don't think I did.

Q. You don't think you did?

A. I don't remember what it was.

Q. Was there any difference, Mr. Nelson, between the phraseology of the order in the first decision and the order in the last decision, which you say you are attempting to comply with, except with regard to the amount of the differential of Beloit over Rockford? In the first case it was 25 cents and in this case 15 cents. Was there any other difference?

A. I don't know. It is a maximum differential, if that is what you mean.

Q. Well, it was a maximum differential in both cases, [fol. 415] wasn't it?

A. Yes.

Q. All right. Now, what other difference was there between the orders except as to the amount of that differential?

A. I don't know as there was any difference in the orders.

Q. Then why is it, Mr. Nelson, that you could comply with the first order by maintaining the 30-cent differential between Brazil-Clinton and southern Illinois at Beloit, and in complying with this order, you cannot do so?

A. We think the rates to Beloit should be at least 15 cents higher than the rates to Rockford.

Exam. Trezise: Well, now, gentlemen, let's — off the record.

(Discussion outside the record.)

Exam. Trezise: We will have to adjourn now here to accommodate some of you people. We will resume this afternoon at 2 o'clock.

(At 12:17 o'clock P. M. March 23, 1943, recess to 2 P. M.)

[fol. 416] *Afternoon Session*

The hearing was resumed pursuant to recess.

2 o'clock P. M.

Exam. Trezise: All right, gentlemen, when you are ready, we will continue.

C. J. Nelson resumed:

Cross-examination (Con't.).

By Mr. Wilkinson:

Q. Mr. Nelson, when you referred to the menace to the general adjustment in this territory, did you by any chance have in mind the menace of breaking up the present adjustment in southern Wisconsin by projecting the situation that now exists at Rockford into southern Wisconsin? Was that any part of the menace that you thought of?

A. I had reference to the level of the rates in northern Illinois and the threat that this low level of rates will constitute to the general adjustment in the surrounding territory.

Q. Now, I notice that one of the comparable or comparative points is Janesville, Wisconsin. Are you familiar with the location of Janesville in relation to Beloit, Wisconsin?

A. Yes, sir.

Q. Janesville is just a few miles north of Beloit, is it not?

A. That is right.

Q. About 18 miles or 15 miles, something of the sort, just approximately, Mr. Nelson?

[fol. 417] A. I would say about 20 miles.

Q. Now, is there any justification in your mind, Mr. Nelson, for having a relationship between Brazil-Clinton, on the one hand, and southern Illinois, on the other, at Janesville, of Brazil-Clinton 30 cents per ton under southern Illinois, and a relationship at Beloit of Brazil-Clinton only 13 cents under southern Illinois?

A. What was the first part of the question?

Mr. Wilkinson: Will you read the question, Miss Reporter.

(Question read.)

The Witness: If you establish rates to Beloit 15 cents higher than the rates to Rockford, and you have a relationship at Beloit that is different than the one at Rockford, you have to disturb one or the other.

By Mr. Wilkinson:

Q. I was trying to get your opinion, Mr. Nelson.

A. My opinion is that the way we published the rates is the proper way to do it.

Q. I was trying to go a little further than that. As a rate expert, Mr. Nelson, I was trying to get your opinion on that situation, as a rate expert, whether or not as an expert, leaving aside what you are trying to do in this case, whether or not you consider that a proper adjustment, or what would make it proper?

[fol. 418] A. I consider that a proper adjustment.

Q. Do you consider it a proper adjustment to have all the rates from a given group to a given destination the same level, the same measure?

A. Do you mean by that, to have the rates from all of these groups to certain destinations on the same level?

Q. No. What I meant was to have all the rates from southern Illinois, for example, to Rockford all the same amount, $2.05 a ton or $2.10, whatever it should be?

A. Yes, I think the group adjustment is all right.

Q. And in doing that, you would ignore the differences in mileages between the various carriers serving origins in such a group, would you not?

A. Well, the rates should be established on the average mileage from the group. That is the usual manner in which they are published.

Q. Yes, but I am now referring to any differences between the mileages of carriers serving the group. You would only reflect that in the average distance from the entire group, is that correct?

A. Where there are different rates from a certain group via different routes, there may be reasons that justify those rates.

Q. Well now, I am looking at page 15 of the carriers' exhibit 3, showing rates to Forreston, Illinois. It is in [fol. 419] section 5 of that exhibit. Now, you consider that it is proper, do you not, that the C. B. & Q. should publish

a rate of $2.10 to Forreston for 401 miles, the same as the Illinois Central does for its haul of 328 miles?

A. Yes, sir.

Q. In other words, you don't believe that rates should be on a strict mileage basis?

A. I stated the average mileage from the group should be considered in establishing rates of that kind.

Q. Then why do you consider that it is proper in the publication of rates to Beloit that you should have a lower rate from mines on the Milwaukee Railroad than you would have from mines on the C. & E. I. Railroad?

Mr. Stadell: Mr. Examiner, this witness, as I understand it, has testified principally with respect to the rates from northern Illinois and Fulton County. He represents or is not testifying for either the C. & E. I. or the Milwaukee, and his railroad serves none of the Indiana mines.

Mr. Morgan: If the Examiner please, the question was addressed to the witness as an expert in rate matters, as I understood it.

Mr. Wilkinson: That is right.

Mr. Stadell: He doesn't make the rates for either the Milwaukee or the C. & E. I., as I understand it.

Exam. Trezise: That is all he needs to do, is to state [fol. 420] that he doesn't know anything about it, that he didn't fix those rates, and I think that maybe that would answer Mr. Wilkinson's question. I don't know. But I think you may pursue that question.

Mr. Morgan: Mr. Examiner, does that answer the question addressed to an expert, because I raise the question now, and because I have in mind certain questions which I will follow with.

Mr. Wilkinson: Off the record.

Exam. Trezise: Off the record.

(Discussion outside the record.)

By Mr. Wilkinson:

Q. Now, Mr. Nelson, if you remember the question, can you answer it?

A. Your question, as I understand it, is if I consider it proper to have two rates from the Brazil-Clinton group to Beloit, one lower than the other?

Q. Yes.

A. Under the conditions that exist, I think that is correct, yes, sir. We have two rates to Rockford and we are establishing rates to Beloit that are 15 cents higher than the rates to Rockford in order to conform to the decisions of the Interstate Commerce Commission.

Q. Well, what are the conditions applying from Brazil-Clinton that distinguish the situation there from the conditions that apply from southern Illinois, as between the [fol. 421] C. B. & Q., for example, and the Illinois Central?

A. I think, Mr. Wilkinson, you better ask some of the Indiana lines that question.

Q. Well, you don't know yourself of any conditions?

A. They are more familiar with the conditions than I am, and probably they can give you a more intelligent answer.

Q. You said that under the conditions that are existing you thought it was proper. I am just trying to find out what those conditions were that you had in mind in giving your answer.

A. Well, those lines that deemed it advisable to maintain different rates to Rockford, and when you conform with the Commission's order in the Beloit case and establish rates to Beloit that are 15 cents higher, you naturally have different rates to Beloit.

Q. Those are the conditions which you referred to in your previous answer?

A. Correct.

Q. Do you feel, you as traffic manager of the C. B. & Q. Railroad, that it is proper to take into consideration the interests of the shippers and the consumers when you are publishing rates?

A. Certainly.

Q. And to what extent did you take into consideration the interests of the shippers in the publication of these pro- [fol. 422] posed rates?

A. Well, as I stated——

Mr. Kaier: Are you talking about Indiana still, Mr. Wilkinson?

Mr. Wilkinson: I am talking about all of them, Indiana and Illinois.

The Witness: As I stated this morning in my direct testimony, we endeavored in so far as was possible to maintain the present relationship and rates to this territory by proposing a uniform increase. I think that is indicative

of the fact that we were considering the interests of the shippers when we did that.

By Mr. Wilkinson:

Q. I believe you said too in that connection that you had to increase some of these rates to avoid violations of the 4th Section of the Interstate Commerce Act.

A. I said in answer to Mr. Biaett's question, if we would increase the rates to Rockford it would be necessary to increase the rates to points beyond Rockford in order to avoid violations of the 4th Section.

Q. Also rates intermediate to Rockford?

A. No, not rates intermediate to Rockford. You wouldn't violate the 4th Section by maintaining lower rates at intermediate points.

Q. Take this point of Sterling, which is one of the rep- [fol. 423] resentative suspended points shown on Exhibit 2. Why did you have to increase or change rates from Indiana to Sterling in order to change the rates at Rockford.

A. We didn't. Sterling was in this general adjustment that we are proposing. Increasing the rate to Rockford was not the reason for increasing the rate to Sterling. We thought the rate to Sterling was a depressed rate, the same as the rate to Rockford.

Q. So as far as the town of Sterling is concerned, it has nothing to do whatsoever with your anxiety to comply with the order of the Commission in the Fairbanks-Morse case?

A. That is correct. We considered the rates at Sterling as depressed rates.

Q. Now, how about Amboy, another one of the representative points. The answer is the same at Amboy as at Sterling, that you just considered it depressed?

A. That is correct.

Q. Is Amboy intermediate to Rockford on any route from Indiana mines?

A. I think not, but it might be. There might be some rates that apply via Peoria that don't show on this exhibit. I would have to check the tariffs to make sure.

Q. Now, when you speak of the adjustment that exists in this territory, you don't mean any fixed or definite relationship, do you?

[fol. 424] A. I am speaking of the level of rates in this northern Illinois territory. I called it an adjustment be-

cause that is what it is, the whole thing. It is an adjustment in the rates to that territory.

Q. Now, is there any reason why to this territory there should be a constant relationship as between the Springfield group, for example, and southern Illinois, and not a constant relationship as between the Brazil-Clinton group and southern Illinois to these destinations?

A. Well, the rates from the lower Illinois groups to this territory have been related by orders of the Illinois Commission. I do not know of any order from the Interstate Commerce Commission that prescribed a definite relationship in the rates from the Indiana groups, one with the other, or between the Indiana groups and the Illinois groups.

Q. So that it is your concept that these relationships, this constant relationship of Springfield under southern Illinois was something that was fixed by the Illinois Commerce Commission?

A. That is my reason.

Q. As a matter of fact, did they not—or rather, did not that relationship exist for a long time prior to the functioning of the Illinois Commerce Commission?

A. Oh, yes. It was established many years ago.

Q. And it has been maintained generally since then?

[fol. 425] A. Generally, yes, sir.

Q. And until the Illinois Commerce Commission required the reduction in the intrastate rates in 1930, the relationship of Brazil-Clinton under southern Illinois to this territory was almost uniformly 30 cents per ton, was it not?

A. I can't answer the question.

Q. Just from a traffic and transportation standpoint, do you know of any reason that would justify a differential of 21 cents Brazil-Clinton under southern Illinois to Amboy for a difference in mileage of 75 miles, and a 30 cents differential Springfield under southern Illinois for a difference in mileage of 126 miles?

Mr. Stadell: Might I inquire if that last question of Mr. Wilkinson with respect to those differentials is based strictly on a consideration of the differences in mileage?

Mr. Wilkinson: My question?

Mr. Stadell: Yes.

Mr. Wilkinson: Well, I am asking him to tell us. There may be facts other than mileage that the witness knows about, that I don't know.

The Witness: We haven't changed the relationship, Mr. Wilkinson, in proposing the higher rates to Amboy. We have, as I stated before, endeavored to maintain the present rate relationship. Now, the difference in distance, Brazil-Clinton under southern Illinois, is approximately what you [fol. 426] have stated, 75 miles, and 127 miles.

By Mr. Wilkinson:

Q. Well, whether or not you are going to change it, do you consider it proper, and what makes it proper, if you do?

A. I think the rates are reasonable.

Q. Both rates?

A. Yes.

Q. And both rates being reasonable, that makes the relationship proper, is that the conclusion to be drawn from your answer?

A. We haven't attempted to change the relationship.

Q. Yes, I understand you are not attempting to change any relationship. Now, with that premise, I am still asking you your opinion, as a rate expert, if you consider it proper?

A. I think that is proper.

Q. And in like manner, would you say that at Dixon, Illinois, where the difference Brazil-Clinton under southern Illinois is 52 miles and your differential is 16 cents, and Springfield under southern Illinois is 126 miles with a differential of 30 cents, is that proper too?

A. I think the rates are proper. They are not unreasonable.

Q. And you think the relationship is therefore also proper?

A. Well, the relationship must be proper if the rates are proper.

Q. Would it be possible in your opinion for any rela- [fol. 427] tionship of rates to be improper?

A. Oh, yes.

Q. What might be some of the elements that one would consider in determining whether a relationship was proper or improper?

A. Well, the distance that exists between the various districts, transportation conditions. Those two are important things that should be considered.

Q. Now, you have read the decisions of the Interstate Commerce Commission involving the rates within Illinois and from Indiana to Illinois. You are familiar, are you not, with the fact that the Commission said that the transportation conditions within Illinois and from Indiana to Illinois are substantially the same?

A. I think I have read something like that.

Q. So that, then, based on your answer, the only difference we have then is mileage, the only difference left, is that correct?

A. I think so.

Q. Would you not think that rates should be made on some relation to distance, that is, the same differential for substantially the same distance in a general territory?

A. I think that as a general thing that is true, but there may be conditions that I am not aware of that justified different adjustments.

Q. So if there are any conditions that justify the exist-[fol. 428] ing relationship into this territory as between Indiana, on the one hand, and Illinois, on the other, as shown by your exhibits, you are not aware of just what those conditions are?

A. But we are not changing the relationship at Amboy or Dixon or these other points you have been talking about.

Q. I know you are not changing them. But as they exist, if there are differences in those relationships, you don't know the conditions that warrant those differences, is that correct?

A. I don't know the rates from Indiana there, so I don't know all the conditions that exist.

Mr. Wilkinson: That is all.

Exam. Trezise: Well, Mr. Nelson, you have said, as the Examiner understands it, that so far as these differentials are concerned, either Indiana or in relationship to Illinois, particularly, so far as you know distance is the fundamental or primary factor to be taken into consideration, and the second one, if there are other conditions you do not know of them?

The Witness: I may not know all of them, Mr. Examiner. Of course, the distance is one factor. Competitive

conditions is another factor. There may be other reasons bearing on the situation that don't show up and I don't know about. I realize that you can't establish rates on coal based on distance entirely. That hasn't been done, although distance is given consideration.

[fol. 429] Exam. Trezise: Well, when you get into that subject and mention that, do you not have in mind particularly the short haul rates as compared with the longer haul rates, or do you?

The Witness: Well, the rates that Mr. Wilkinson was talking about are long haul rates.

Exam. Trezise: They are long haul rates, yes, and if you concede for the sake of your answer, anyhow, that distance is a consideration, the question I had in mind was, so far as you know, distance is the one primary factor to be taken into consideration in connection with the rates from Illinois, in which you have a voice and have some consideration in establishing, in relationship to the rates from Indiana. I am asking you if distance isn't one of the primary factors.

The Witness: That is correct.

Exam. Trezise: Then I am going to ask you if it isn't the primary factor, if you feel that you know—at least you can give your own view on that.

The Witness: Well, if you are considering long haul rates. Now, when you compare long haul rates with short haul rates, then I don't know that you can say that, Mr. Examiner.

Exam. Trezise: Where you have a group adjustment and there is justification for a group adjustment, from Indiana and from Illinois to any given destination, would you say that distance is the primary factor that you take into consideration in making the rates from Illinois in relation to the rates from Indiana?

[fol. 430] The Witness: Yes.

Exam. Trezise: That answer is, yes?

The Witness: Yes.

Exam. Trezise: Thank you.

By Mr. McElroy:

Q. Mr. Nelson, what is the distance from southern Illinois to Janesville, the driving distance? It is shown on page 58 of Exhibit 3.

A. Southern Illinois to Janesville, the average is 422 miles.

Q. And the rate is 2.79 a ton?

A. Yes, sir.

Q. And what is the average distance from southern Illinois to Madison, Wisconsin?

A. It is 420 miles.

Q. And the rate is $2.90?

A. Yes, sir.

Q. In other words, the distance to Janesville is 2 miles greater than to Madison, but the rate to Janesville is 11 cents per ton less than the rates to Madison, is that right?

A. That is right.

Q. And as I understand it, you are using this southern Wisconsin adjustment to justify a change in the rates to northern Illinois?

A. Yes, sir, that is one of the reasons. Geographically, Janesville is south of Madison, but there are routes to Madison that don't exist in the rates to Janesville. That [fol. 431] fact no doubt is the reason why the average distance to Janesville is two miles greater than the distance to Madison.

By Mr. Kaier:

Q. Is it a fact also, Mr. Nelson, that Madison is in a large destination group?

A. Yes.

Mr. Morgan: What do you mean by a large destination group?

Mr. Kaier: And, Mr. Witness, what is the location of Madison with reference to the rest of the group? Is it at a near distant point from the mines or a far distant point with reference to the rest of the destination group?

The Witness: I think the north line of that group runs through Madison.

Mr. Kaier: That is all.

By Mr. McElroy:

Q. Well, if these compared rates are parts of the group adjustment, what weight can the Commissions attach to the exhibits, since they don't purport, as I understand, to

show the extent of the group adjustment, either as to the accepted territory or the compared territory?

A. These rates are representative rates.

Q. You want the Commission to take them as such?

A. We have selected ~~these~~ points as representative and ~~shown the~~ rates as representative points.

Mr. Stadell: Does that mean Madison was representative of the destination group in which it is located?

[fol. 432] The Witness: Yes.

Mr. Stadell: And likewise the other southern Wisconsin points that you have used as comparative points?

The Witness: That is the reason they were selected, they were representative.

By Mr. McElroy:

Q. Both in mileage and in tonnage?

A. No, they were selected because the Commission had approved rates to these destinations, and they were geographically located and thought they would be representative, not always, as to tonnage. We certainly wouldn't have selected Apple River from the standpoint of tonnage.

Q. As a matter of fact, you would have to do a little work in your southern Wisconsin adjustment before you start a readjustment in northern Illinois, won't you, if you are going to dwell on mileage?

A. Well, Wisconsin rates are much higher than the rates to Illinois.

Exam. Trezise: Does that answer your question. It is a fact that the rate to Madison and to Janesville were both $2.90, before this Fairbanks-Morse case about which we have heard so much in this proceeding. It is the Interstate Commerce Commission perhaps that is to blame a great deal for this reduction to Janesville, to the present $2.79, which took it out of the $2.90 class. Are those not facts?

The Witness: Yes, sir.

[fol. 433] Exam. Trezise: Maybe if Madison had been included in that complaint, is it conceivable in your mind that there might have been some different sort of adjustment, if the factor of distance, as you indicate, was the controlling and fundamental one in constructing these rates? Is that a fact?

The Witness: That is correct.

Mr. McElroy: If you examine the distances and rates to Fort Atkinson, Lake Mills, and Madison, you would find the same situation as we have just discussed with relation to Janesville, on the one hand, and Madison, on the other, in that the spreads in distances are not at all consistent with the spreads in rates.

The Witness: Well, I haven't examined them.

Exam. Trezise: Any further questions?

By Mr. Vesey:

Q. As I understand your testimony, Mr. Nelson, you really appear in two capacities, one as a rate expert, and the other as a fuel traffic expert?

Exam. Trezise: Be sure that you appear as either one of these. Do you?

The Witness: I don't understand his question; as fuel traffic manager of the railroad, I handle traffic.

By Mr. Vesey:

Q. Are part of your duties the making of studies with respect to the sources of production and the distribution of that production of coal moving over the lines of your railroad and competing lines?

[fol. 434] A. In so far as it pertains to traffic.

Q. In so far as it pertains to traffic?

A. Yes, sir.

Q. Now, I take it, that some time here you made a study with respect to the production of coal at the several origin groups, as shown in your Exhibits Nos. 8, 9 and 10, is that right?

A. Those are my exhibits, yes, sir.

Q. I say, you made a study, I take it, of that production and the distances reflected in that study, is that right?

A. I did. The first two exhibits, the information was taken from the Illinois coal reports, and the last exhibit, No. 10, the information was taken from the Illinois-Indiana Coal and Coke Committee reports.

Q. And in this study, when it came to your study with respect to production, you deemed it advisable to cover a ten-year period, in so far as the production from the several origin groups in Illinois and Indiana were concerned, is that correct?

A. Yes, sir.

Q. But when it came to the question of distribution of that production, I note from your Exhibit 10 that you chose to use only the years 1941 and part of 1942, is that correct?

A. Exhibit No. 10 is a ten-year period.

Q. Does that also embrace a ten-year period of distribution?

[fol. 435] A. Exhibit 10 was my exhibit. It consists of 13 pages and shows tonnage from all the groups in Illinois, Indiana, and western Kentucky.

Q. Now, is that the only study of distribution that you made, that is, the study that is reflected in your Exhibit 10?

A. No, there is another.

Q. Is there another distribution study that you made?

A. One of Mr. Robertson's exhibits contains a tonnage statement.

Q. Did you make that study or did Mr. Robertson make that study?

A. Well, the information was furnished to Mr. Robertson by the destination lines. The Burlington was one of the destination lines that furnished information regarding the shipments that terminated on its line.

Q. So that in so far as the study in Robertson's Exhibit 4 of distribution from either the Fulton County or the northern Illinois districts is concerned, in so far as the Burlington Railroad is affected, those statistics were furnished by you, that is, your road?

A. I furnished part of them, yes, sir.

Q. Why didn't you, when you were making this study, Mr. Nelson, make a study to determine the changes, if any, that have occurred in the distribution of coals produced in Illinois to the destinations in both the affected and the com-

[fol. 436] pared territories?

A. Well, Exhibit No. 10 shows that to some extent.

Q. It doesn't show anything, does it, with respect to whether or not there has been a decline or an increase in the distribution from any particular origin group to either the affected or the compared territory, does it?

A. The tonnage statement in Robertson's Exhibit No. 4 shows tonnage to comparative points as well as suspended points.

Q. Yes, I know, but I say, you didn't make a study with respect to the distribution of coals from the several origin groups in Illinois and Indiana to the destinations involved

in the suspended territory here as compared with the destinations involved in the compared territory, did you?

A. Only to the extent that is reflected in Exhibit No. 10.

Q. Only to the extent that is reflected in Exhibit No. 10?

A. And to the extent that it is reflected in this statement contained in Robertson's Exhibit No. 4.

Q. And that statement is shown there—in other words, that is the full gamut of any studies you made with respect to that problem?

A. That is correct.

Q. Have you at any time within the past two or three years made a study to determine whether or not the distribution of Fulton-Peoria coals in the northern Illinois district, and by that I mean the affected territory here, has [fol. 437] increased or decreased?

A. Exhibit No. 10 reflects the trend of traffic from the Fulton County field to all of the territories that are shown in that exhibit.

Q. But that exhibit shows nothing at all, does it, with respect to whether or not the Fulton-Peoria district coals to the affected territory in this proceeding has increased or decreased during the past ten years, does it?

A. Fulton County to Illinois?

Q. No, I said to the affected territory, Mr. Nelson. Is there any question as to what I mean by that?

A. Well, the tonnage to the affected territory is included in this tonnage shown on page 3, columns B, C and D, to Illinois, not otherwise shown.

Q. Now, will you just take the time to listen to my question and give me an answer.

(Question read.)

Exam. Trezise: But that does not indicate the increase or decrease to the affected territory, but merely indicates an increase or decrease to these other points. Now, is that what you are getting at?

Mr. Vesey: Exactly. I think it is as clear as anything can be in a question.

Mr. Kaier: Of course, it is clear on the exhibit.

Exam. Trezise: It is clear on the exhibit that way.

[fol. 438] Mr. Vesey: All it would take is just a simple yes or no answer and we could have an end to it.

Mr. Kaiser: How can it end before you ask any question about it?

Exam. Trezise: Go ahead, Mr. Nelson. What were you going to say?

The Witness: The tonnage to Wisconsin is shown on page 11——

Mr. Vesey: Mr. Nelson, did I ask you anything about Wisconsin?

The Witness: You said the affected territory and the surrounding territory, as I understood it.

Mr. Vesey: No. I said just the affected territory.

Exam. Trezise: All right. You have your answer, haven't you, Mr. Vesey, on that?

Mr. Vesey: I would like to get the correct answers from him.

Exam. Trezise: You would rather have it from him. I assure you that that is true.

The Witness: Mr. Vesey, all of the tonnage that Fulton County shipped into this affected territory is in these figures. Now, it doesn't show separately just what that tonnage is.

By Mr. Vesey:

Q. Do you know whether or not, Mr. Nelson, shipments from Fulton-Peoria district have increased or decreased to the affected territory in northern Illinois during the past [fol. 439] ten years?

A. No, I can't answer that question, excepting as shown here.

Q. Do you know whether or not shipments from that same origin group have increased or decreased with respect to the destinations in southern Wisconsin referred to as the compared territory?

A. This exhibit shows that your Wisconsin tonnages increased. We know that the tonnage to Wisconsin goes to the southern part of the state, and that is the territory these locations are in. I can't tell you——

Q. How do you know that——

A. Let me finish my answer. I can't tell you from this exhibit what specific tonnage has been shipped to each one of these destinations in Wisconsin that has been selected as representative for a period of years. I do not have that information available.

Q. You don't have that information available?

A. No, sir.

Q. Well, if you turn, for example, here to your Exhibit No. 10 at page 11 and address yourself to Fulton County, on the shipments to Wisconsin for the past three years, that shows a rather steady, marked decline of shipments to that territory, does it not?

A. To Wisconsin?

Q. Yes.

[fol. 440] A. From Fulton County?

Q. Yes.

A. It is the reverse. I would say it is an increase.

Q. Doesn't that show a decrease, 114,532 tons for the year 1939 to 102,420 tons for 1941?

A. Yes, but you go back farther than that and it shows an increase.

A. I asked you for the last three years.

A. I don't understand you.

Q. If you don't understand the question, Mr. Nelson, suppose we take time to read it back and get it straight.

A. I thought you said ten years.

Q. Now, in your testimony, you referred to, I believe, the 35 cent differential, Fulton County under southern Illinois, that existed in 1910, I think you gave it as the date. Then you referred to the 60 cents differential that is now in effect, Fulton County under southern Illinois, on shipments into Beloit and to Rockford, did you not?

A. I gave the difference in rates.

Q. Now, don't you know, Mr. Nelson, that in 1925, an agreement was reached whereby the differential at those destinations, Fulton County under southern Illinois, was 79 cents a ton?

A. It was not. A Beloit agreement was reached. It was 79 cents Fulton County under southern Illinois for a while.

[fol. 441] Q. Now, there came a time when that differential changed to the present differential, with successive changes—that final change was what, in 1933, was it?

A. Well, it is the date of the first Beloit decision, when we had to adjust the rates at Beloit to make them 25 cents higher than the rates to Rockford.

Q. Now, at the time that decision was reached, don't you know, as a matter of fact, the mines in the Fulton-Peoria district had virtually closed down, and that change came about solely by virtue of the fact that the Fulton-Peoria field as a field was considered a nonentity in the production of coal?

A. The production in Fulton County field in 1935 was not as great as it is today.

Q. I didn't ask you that.

A. The mines had not closed down.

Q. I am going back beyond 1935—1932, 1933, at the time that that case was under consideration, don't you know that as a matter of fact?

A. I know that the production in the Fulton County field prior to the development of strip mines in that district was not nearly as great as it is today, but it was not closed down.

Q. In other words, there was still something left, is that what you mean?

A. Oh, sure, there was production in the field, but not to [fol. 442] the extent as it is today.

Q. I think it is also part of your duties to inquire into and ascertain something with respect to the kind and character of coals that are produced in the fields in Indiana and Illinois, is that correct?

A. Well, I am somewhat familiar with the character of the coal.

Q. Do you then know, by virtue of that familiarity, Mr. Nelson, that considering Illinois coals, for example, that your high grade, your superior coal, so to speak, is produced in so-called southern Illinois district?

Mr. Stadell: Now, I object to that question, Mr. Examiner, first on the ground that this witness has not been qualified to testify with respect to the comparative qualities of the coal produced in any of these fields; and second, that even if he was qualified, the answer called for by the question is wholly irrelevant, immaterial and incompetent in this case, because it has nothing to do, the differences in the quality of the coal has nothing to do with the fixing of lawful freight rates by the Interstate Commerce Commission.

Exam. Trezise: The Examiner is going to rule that unless this witness shows more ability than he has already shown with respect to the knowledge of the quality of this coal and can discuss it to a sufficient detail to impress one on this record of his knowledge, we will have to exclude questions concerning something that he has only a hearsay [fols. 443-444] knowledge of.

Mr. Vesey: If that is what he has, just a hearsay knowledge, I certainly don't want an expression based on that.

The Witness: I am not a fuel engineer.

By Mr. Vesey:

Q. Let us approach it from another point of view, Mr. Nelson. In your studies of the distribution of coals produced in Illinois, have you found certain coals from certain origin groups having very limited, by that I mean, certain fields of distribution, as compared to other coals that have what might be termed an overall distribution?

A. Usually the coal of better quality has a greater distribution than the coal——

Q. And the coals from what origin group in Illinois have a greater distribution, Mr. Nelson?

A. I think southern Illinois has a greater distribution than any other coals.

Exam. Trezise: Than what?

The Witness: Than other coals in Illinois. However, the coals from other districts have been distributed over a wider area during recent years than they did before the coal was washed. The washing improves the quality of it.

. . . . . .

[fol. 445] Exam. Trezise: Let us not get past this point. Did you say southern Illinois had a greater distribution than what? I asked you that before. Now, Mr. Vesey said, than other groups.

[fol. 446] Mr. Vesey: Yes. He said other groups in Illinois.

Exam. Trezise: Is that true?

The Witness: I think so.

Mr. Vesey: There isn't any question about that, is there, Mr. Nelson?

The Witness: It has a greater distribution than any other Illinois coal that I know of.

Exam. Trezise: And than any other individual group?

The Witness: Yes.

Exam. Trezise: Or all others put together; now, which is it?

The Witness: No.

Exam. Trezise: Which is it?

The Witness: Than any other individual group.

Exam. Trezise: Than any other individual group. Thank you.

By Mr. Vesey:

Q. Now, Mr. Nelson, looking forward to the development and proposal of the rates that are under suspension, what study did you give to the several destinations involved in the affected territory and in the compared territory to determine the similarity of those destinations in so far as coal consumption is concerned?

A. Well, the studies reflected in these exhibits.

Q. That is the whole study?

A. And the general knowledge that I have acquired over [fol. 447] the years.

Q. The general knowledge that you acquired over the years?

A. Yes, sir.

Q. That is, of course, in your position with this railroad. Now then, for example, in order that we may have something specific in the record, would you just take a destination, such as Janesville, Wisconsin, in the compared territory, and Rockford, Illinois, in the affected territory, and tell me how, addressing yourself entirely with respect to consumption of coal, they compare one with the other?

A. During the 18 months period covered by this statement, the Fulton County coal into Rockford was a little more than 31,000 tons, and into Janesville 2500 tons.

Mr. Morgan: Off the record, what exhibit are you referring to?

The Witness: That is Section 8 of Robertson's Exhibit 4.

By Mr. Vesey:

Q. Is that taken from page 4 of Section 8?

A. Section 8, page 4 and page 5.

Q. Well, maybe your exhibit isn't the same as mine. My copy that I have here shows 950 tons from Fulton County.

A. Those are divided in six months periods, Mr. Vesey.

Q. Then it would be about 1900 tons in three periods, wouldn't it?

A. Wait a minute, maybe I made a mistake. To Janesville, yes, there was 1900 tons and to Rockford 31,000.

[fol. 448] Q. Now, is there any particular difference, Mr. Nelson, in so far as towns like that are concerned, with

respect to consumption of coal by receivers, that you know of?

A. I don't understand your question.

Q. Well, I mean by that, are there competing industries in those towns, for example?

A. Janesville versus Rockford?

Q. Yes.

A. Well, there are industries in both towns.

Q. Well, put it in another way: Is there substantial consumption of industrial coals, that is the fine coals, as you show them on your exhibit, in both towns?

A. Oh, yes.

Q. What is that?

A. There is a substantial consumption of fine coal at both points.

Q. In other words, if you look at both destinations, for the purposes of comparison, or speaking of one as typically representative of the other, you could take, could you not, Rockford as typically representative of Janesville, or you could take Janesville as typically representative of Rockford, could you not?

A. Well, of course, Rockford is a much larger place and the consumption would be greater than at Janesville.

Q. What is that?

[fols. 449-450] A. Rockford is a larger place, more industries at Rockford. Therefore, the consumption would be greater at Rockford than it would be at Janesville.

Q. Now, would there be any other difference that you can think of?

A. Well, there might be some industries consuming more coal than others.

Q. Well, do you know of any other differences than just that?

A. Those are all I can think of now.

Q. Now then, if that be true, Mr. Nelson, why didn't you make a study to determine whether or not the changing of the differential, so far as Fulton County was concerned, from the 79 cents which still prevails at Janesville, as against the 60 cents at Beloit and Rockford, resulted in a loss of markets to Fulton County producers of coal?

[fol. 451] The Witness: The differential at Janesville is 79 cents today.

Mr. Vesey: I can't hear the witness.

The Witness: The differential at Janesville is 79 cents today, and to Rockford it is 60 cents.

By Mr. Vesey:

Q. At Beloit it was formerly 79 cents and it is 60 cents today, is that right?

A. Beloit was formerly 79 cents, but Rockford never was.

Q. And Beloit is 60 cents now?

A. That is right.

Q. Now, I asked you, did you make any study, in view of that past history, to determine whether or not those differential changes resulted in a shift in the distribution of coal from one origin district to another, did you make such a study?

A. No, I did not. That happened several years ago.

Q. Did you make a study of it?

A. I made no study, no.

Mr. Biaett: Were you handling the coal-rates at the time those changes took place, Mr. Nelson?

The Witness: No, sir.

[fol. 452] By Mr. Vesey:

Q. Did you make any studies, for the purposes of this case, to determine what the distribution pattern was from the origin districts in Illinois, I mean as between Fulton County and southern Illinois, where the differential was 60 cents, 70 cents or 79 cents?

A. No, sir.

Q. And no studies of that kind were made for this case?

A. No, sir.

Q. Isn't it true, Mr. Nelson, if you are to review the decision in the Beloit case, that is the Fairbanks-Morse case, that in so far as Fulton County is concerned, that you could have complied with the Commission's order in that case by either increasing the rate from Fulton County to Rockford, decreasing the rate to Beloit, without changing the rates to any other destination in that territory? I say, only with respect to Fulton County coals.

A. I think that would have been possible, but it wouldn't have been a very orderly adjustment.

Exam. Trezise: You don't mean that it was possible to increase the rate to Rockford? Is that what you are saying?

The Witness: He said either way.

Mr. Vesey: Either way, do it one way or the other, to comply with the order.

Mr. Stadell: You mean the 1933 Fairbanks-Morse case or this one?

[fol. 453] Mr. Vesey: This one here, 251 I. C. C., the last case.

Mr. Stadell: Did you understand that question?

Exam. Trezise: You say you could have increased the rate to Rockford notwithstanding the state order against increasing that rate?

The Witness: As I understood his question, it was, could we comply with the Commission's order in the Fairbanks-Morse case in so far as it pertained to the rates from Fulton County by either increasing the rate to Rockford 15 cents or reducing the rates to Beloit 15 cents and not disturb the rates from the other districts. That is only in so far as it pertains to rates from Fulton County.

Mr. Stadell: Now, I object to the witness answering the question. Have you answered that question?

Mr. Kaier: Yes, he has answered it.

The Witness: I said, it might be possible.

Mr. Stadell: Well, I move to strike the answer of the witness, and I object to the question on the ground that the decision itself will speak for itself, and that isn't the way I understand the decision at all.

Mr. Vesey: I think you are under a misapprehension. I asked this question: If it were not possible under that order in that case for the carriers to comply therewith by either increasing the rate from Fulton County to Rockford or by decreasing the Fulton County rate into Beloit, with-[fol. 454] out changing the rates from Fulton County to any other destination, in so far as the Fulton County coal is concerned.

The Witness: I didn't understand your question that way.

Mr. Stadell: I will withdraw my objection.

Mr. Vesey: That is the question I was asking. Isn't that true?

The Witness: I understood your question to be about changing the rates from any other field.

Mr. Vesey: No.

The Witness: No, I don't think it would have been possible to do it, because you would have the same difficulty that we have experienced, 4th Section difficulty.

By Mr. Vesey:

Q. Now, will you tell me what that 4th Section difficulty is in so far as Fulton County coals are concerned?

A. The rates to points beyond Rockford could not be lower than the rates to Rockford.

Q. Now, just name one point where that situation would actually prevail, will you?

A. The rate from Fulton County to Freeport applicable via the Milwaukee Railroad, that applies to Rockford, and you couldn't hold a lower rate at Freeport unless you obtained relief from the Commission.

Q. I haven't checked that one. Is there any other destination?

[fol. 455] A. Oh, yes, there are others; any rates to points beyond Rockford apply via Rockford.

Q. Aren't your rates from Fulton County, when you go beyond Rockford, aren't they higher on your Fulton County coals when you are going north?

A. Freeport is west of Rockford.

Q. I said going north.

A. You said beyond Rockford. I understood your question to say beyond Rockford—any other destination?

Q. Yes.

A. I am telling you some destinations. We changed the rates to, one of them was Freeport, another one was Pecatonica.

Q. You are just picking out destinations between Rockford and Freeport, is that what you are doing, Mr. Nelson?

A. Those happen to be between there, and there are many others.

Q. Outside of those towns, are there any other destinations that would have resulted in a 4th Section violation if you had done what I suggested in my previous question?

A. It would be necessary for me to check the tariffs to find out what destinations would be involved.

Q. Did you make a check at the time to find out whether or not that could be done, or have you made such a check?

A. We deemed it advisable to follow the plan we have pursued in complying with this order.

Q. In other words, it wasn't so much a question of 4th [fols. 456-457] Section violations as it was the desire on your part to increase the revenue on this coal, isn't that right, Mr. Nelson?

A. Both.

Q. In so far as your 4th Section is concerned, on Fulton County coals, the only reference you have to destinations are between Rockford and Freeport, is that right?

A. No. I said there may be many others.

* * * * * * *

[fol. 458] By Mr. Bather:

Q. Mr. Nelson, at the opening of your testimony on direct you mentioned that the adjustment of rates on coal to the affected territory was intricate and complicated, which was one of the reasons why the proposal here was made and the rates increased. Now, does that increase that you propose change the intricate or complicated adjustment?

A. The plan which the carriers followed carried with it increasing the rates to each individual point the same amount from the various districts, thus preserving the [fol. 459] relationship that now exists in so far as possible. Now, the only way in which that has not been followed is where we had to make changes to avoid 4th Section departures. Now, where the rate from one district was increased 15 cents a ton, we endeavored to increase the rates from other districts to that point 15 cents a ton. Where the rate was increased 10 cents a ton or 5 cents a ton, we endeavored to increase the rates from other districts the same amount.

Q. There was no uniform increase made throughout the destination territory?

A. No, you couldn't do that, Mr. Bather, because of departures from the 4th Section. To illustrate, the rate to Dixon from southern Illinois could not be made higher than the rate to Chicago. Therefore, the increase at Dixon was 5 cents; but we endeavored to increase all rates to Dixon 5 cents. Now, the rate to Forreston could not be increased more than 10 cents a ton without causing a 4th Section departure, since the rate to Rock Island had to be held as maximum. And that Forreston rate affects the rate to Polo making to Polo the same increase as to Forreston. The Dixon rate affected the rate to Amboy. And so on all through the adjustment.

Where we have departed from the plan that I described has been because of 4th Section difficulties.

Q. Getting back to your testimony before the recess with reference to the long and short haul provisions of the Inter- [fol. 460] state and Illinois law, you mentioned points such as Freeport, Pecatonica, as related to Rockford. Now, those points are, Pecatonica, for example, on the North Western Railroad between Rockford and Freeport, isn't that right?

A. Perhaps it is. I thought it was located on the Milwaukee. I had in mind points on the Milwaukee Railroad beyond Rockford.

Q. That is what I am getting at. Now, does coal, for example, from Fulton County to Freeport in connection with the Milwaukee Road move through Rockford?

A. Yes, routing it via Mendota up through Rockford, to Freeport.

Q. Is that correct? Isn't Rockford north of Davis Junction, and isn't it a fact that coal to Freeport via the Milwaukee Road would move through Kittredge and not through Rockford?

A. I think not. The short distance would be through Rockford.

Q. Well, how could you get to Freeport in connection with the Milwaukee Railroad by going through Rockford? Would you take it to Rockford and then bring it back to Davis Junction, or would you take it north to Rockford and then take it to Freeport?

A. You may be right, Mr. Bather. I thought that line across there, looking at this map, was the Milwaukee Railroad.

Q. Now, take the line of the North Western to Freeport. That coal would move through West Chicago and through [fol. 461] Rockford to Freeport, wouldn't it?

A. Yes, routing from Fulton County mines would be via Sterling, I think.

Q. Well, nevertheless, you would have to take it to West Chicago and bring it back over to the Freeport branch of the Chicago and North Western Railroad, wouldn't you?

A. That would move through Rockford.

Q. Isn't it a fact you have a blanket 4th Section relief from the Interstate Commerce Commission, relieving you from the provisions of that section of the Act on traffic moving via circuitous routes?

A. That can be used where you have one route that is longer than another route.

Q. You have such a 40th Section relief order from the Illinois Commerce Commission, haven't you?

A. Yes, sir.

Mr. Vesey: I am not through with my cross examination.

Mr. Bather: Well, I just wanted to put that in. I think that is all on that point. I have some other questions I want to ask.

Exam. Trezise: All right, Mr. Vesey, go ahead.

By Mr. Vesey:

Q. Then coming back to the questions I asked you before the recess, under the order you are talking about, all that was incumbent upon the carriers to comply with that order was to make either the one adjustment or the other adjust-
[fol. 462] ment at Beloit and Rockford, without raising the Fulton County rates to any of the destinations in this affected territory, is that right?

A. We could have complied with the order by reducing the rates to Beloit.

Q. That is, you could have done it that way without affecting the rates to any other town in the affected territory, is that right, so far as Fulton County coals are concerned?

A. The rates to Beloit would, of course, have had to have been held as maximum at intermediate points. When you say without affecting the rates to any other town, I don't know that that is entirely correct.

Q. I mean without increasing the rates to any other towns.

A. We would not have had to increase the rates to Rockford.

Q. Or to any other destination in this affected territory, isn't that right?

A. We possibly would have had to reduce the rates to some intermediate point to Beloit.

Mr. Bather: What are those points?

The Witness: I would have to check the tariff to give you a correct answer.

By Mr. Vesey:

Q. Suffice it to say, you did not give enough consideration to that, to ascertain the destinations that would be affected, is that correct, Mr. Nelson?

A. We elected to comply with the order by increasing the [fol. 463] rates rather than reducing them, providing the Interstate Commerce Commission would permit us to do so.

Q. Now then, when you made these proposed increases, in so far as Fulton County coals are concerned, there was nothing that prohibited you or any other carrier from either maintaining the 79 cent differential Fulton County under southern Illinois, which prevailed at the northern point of Janesville, or following the principle that you enunciated in your answer to the Examiner of increasing that differential as against the compared base group, as you approached the origin group of the related group, was there?

A. If you would maintain a differential in the rates between Fulton County and southern Illinois of 79 cents at Beloit, you would reduce rates to Rockford and points intermediate to Rockford.

Q. Now, if you had done that, in so far as the Fulton County coals alone are concerned, you would have had to follow your principle of increasing the differential as you decrease in miles, in so far as the related groups are concerned, would you not, with the net result that your differential Fulton County under southern Illinois at Beloit, Rockford, would have been either 79 cents or greater, isn't that correct?

A. Well, we take the position that 79 cent differential doesn't necessarily have to be established at Beloit.

Mr. Vesey: Now, will you answer my question, please. [fol. 464] I will ask the reporter to read it back.

(Question read.)

The Witness: Well, I think that in establishing short haul rates, such as we have in this case, Fulton County to these points in northern Illinois and to Beloit, they should not be put on a differential basis, and therefore, your question as to following the principle of establishing differentials was not given consideration in this adjustment.

By Mr. Vesey:

Q. All right, if you follow that theory, the net result, so far as Fulton County under southern Illinois is concerned, and that is the base group that I am using, the differential that would have prevailed under such a rate adjustment at Beloit, Rockford, would have been 79 cents or greater, would it not?

A. If we had followed what adjustment?

Q. The principle you just spoke of.

A. We didn't follow any differential adjustment in proposing the rates we proposed.

Q. You are speaking of that as one group against another, are you not?

A. I am speaking as to the rate from Fulton County into northern Illinois. We consider those short haul rates and we didn't relate them specifically to the rates from other groups. What we did was to increase those rates the same amount as we did the rates from other districts.

[fol. 465] Q. When you talk about your short hauls and the differentials prevailing in short haul territory, that differential increases, does it not, as mileages decrease between compared groups?

A. When you have related groups. In this instance we didn't have related groups.

Exam. Trezise: You might tell us how far down you would go before you would meet a related group.

The Witness: Springfield, Illinois, versus Belleville—not Springfield versus Fulton County.

Exam. Trezise: Springfield versus the other groups, Centralia, Belleville, DuQuoin, southern Illinois, for example?

The Witness: Yes, sir.

By Mr. Vesey:

Q. And you could make the same comparison, Fulton-Peoria as against the northern Illinois district, couldn't you?

A. No, Fulton-Peoria and northern Illinois classify in the short haul territory.

Q. Both of them?

A. Yes, sir.

Q. Then if that be true, do you know of any reason why the northern Illinois, so far as those mines are concerned,

should be treated differently than the mines in the Fulton-Peoria district in this territory?

[fol. 466] A. We did not treat them any differently.

Q. I didn't ask you that, Mr. Witness. I asked you, do you know of any reason why they should be treated differently, and please answer my questions.

Mr. Kaier: Whether they should be treated any differently, and he said they didn't treat them any differently.

Mr. Vesey: I think everyone understands the question I asked him.

Exam. Trezise: Do you know of any reason why you should? You didn't, but do you know of any reason why you should?

The Witness: Well, the Illinois Commission prescribed rates from Wilmington to Rockford and from Fulton County to Rockford.

Mr. Vesey: Now, I ask the witness to be directed to answer the question, if the Examiner please.

The Witness: We had to comply with their orders when they were issued. The reduction in the rate to Rockford from Wilmington, as I recall it, was 47 cents a ton, and from Fulton County to Rockford it was 17 cents per ton. Therefore, we treated the northern Illinois rates differently than we did the Fulton County rates in complying with that order. Does that answer your question?

By Mr. Vesey:

Q. No. Now, I asked you, as an expert witness, do you know of any reason why when it comes to making rates that one district should be treated differently, when it comes to [fol. 467] this northern Illinois territory?

Exam. Trezise: Other than the order required or indicated you should do, than the way you did it, is that your idea?

Mr. Vesey: That is right. I am at least trying to get his opinion on that.

Exam. Trezise: Independent and outside of anything that may have controlled you with respect to the terms of the order, now, is there any reason?

The Witness: They are both short haul rates and they should be made in accordance with distance and other conditions that may exist, compliance with Commissions' or-

ders, whatever they may be. There is no definite relationship between the rates from northern Illinois and Fulton County or between the Fulton County and northern Illinois rates, and the rates from other groups in Illinois.

By Mr. Vesey:

Q. Now, let us see if we can't get something concrete. Will you look at Exhibit 4, the distance from the Wilmington mine to Dixon, Illinois, and the distance from Fulton-Peoria to Dixon, Illinois, and the rates that you propose, and explain to me why, in view of that last answer, you have that difference. You will find the Dixon rates and mileages on page 6, Section 5, and Peoria on page 2 of Section 3 of Exhibit 4.

The Witness: Page 2, Exhibit 3?

[fol. 468] By Mr. Vesey:

Q. Exhibit 4, Section 3. Page 6 of Section 3, I beg your pardon.

A. The mileage from Fulton to Dixon is 123 miles. The rate is $1.50.

Q. Your proposed rate is what?

A. $1.55.

Q. All right.

A. Now, what was the page number for the other?

Q. On page 6 of Section 5, the same exhibit, from the Wilmington mine.

Mr. Cardy: That rate to Dixon is the one under complaint in this case.

By Mr. Vesey:

Q. That exhibit shows, does it not, Mr. Nelson, that from the Wilmington mine to Dixon the distance is 128.4 miles; the present rate is $1.05 and you propose a rate of $1.10. Now, if that would be short haul territory, will you tell me, as a rate expert, what was the basis that you used for proposing rates with those differences?

A. We made the rate from Wilmington 5 cents higher than it was or than it is now. There was probably a reason for that.

Q. Well, is there any rhyme or reason that you know of, Mr. Nelson, for such rates as those in this territory?

A. Dixon is intermediate to Rockford. It is my opinion that Dixon is intermediate to Rockford via the Illinois Central Railroad from Wilmington, and therefore they have [fol. 469] maintained the same rate to Dixon that they have maintained to Rockford, $1.05 on state traffic, and we increased that rate 5 cents.

Q. And if you went right on to Rockford, assuming that is true, and made the same comparison, Fulton County against the Wilmington mine, you would have the same disparity there as you would to Dixon, would you not?

A. We had to comply with the Illinois Commission's order in publishing rates to Rockford.

Q. If you carried it on to the next step, to Beloit, you would have the same disparity, would you not?

A. The Interstate Commerce Commission prescribed rates from northern Illinois to Beloit in Docket 20912. I don't remember what the rate was. We had to comply with the order.

Q. I think if you will turn to page 3 of Section 6, Exhibit 4, you will find it. In the interest of time, I will state to you, your exhibit shows it is $1.40 for 126 miles, compared with your Fulton County proposed rate to Dixon of $1.55 for 123 miles.

A. That is correct.

Q. So that, as a matter of fact, Mr. Nelson, you can't justify, can you, the disparities on the basis they are simply short haul territory? I mean, that isn't a matter of concern, is it?

A. Well, the fact that the Commission prescribed a rate of $1.40 from northern Illinois to Beloit doesn't necessarily [fol. 470] mean that the proposed rate from Fulton County to Dixon is not proper.

Q. Now then, in the case of the rate to Beloit, that was an established maximum rate, was it not, for that distance?

A. That is my recollection, yes.

Q. If that be true, will you explain to me why, as a rate expert, and your committee as a group, representing carriers, propose at this time a rate of $1.55 for a haul of 123 miles, if you are giving as much consideration to Commission decisions as you have stated you gave on your direct examination?

A. Well, I referred in my direct testimony to other decisions of the Commision that I thought justified the proposed rate from Fulton County to Dixon.

Q. In other words, where the maximum rate prescribed is one you don't wish to follow, you just disown it, is that it, or leave it out of your considerations in your proposal?

A. I don't know that we disown it or anything like that, but it didn't apply to Dixon. Therefore, we didn't necessarily have to be governed by the order involving the rate from northern Illinois to Beloit.

Q. Well, let me put it the other way, Mr. Nelson. If the Interstate Commerce Commission was correct in its determination that $1.40 was a proper maximum rate for a mileage of 126 miles in short haul territory, I mean if that determination be valid, then wouldn't it follow from that, that [fol. 471] the rate of $1.50 which now prevails on Fulton County coal to Dixon, a distance of 123.8 miles, is at a level which is unreasonably high?

A. No, sir, it does not.

Q. Why doesn't it?

A. The fact that the Commission prescribed a rate of $1.40 from northern Illinois to Beloit doesn't necessarily mean that all rates in that territory for that distance has to be $1.40.

Q. But didn't you tell me this was a short haul territory?

A. Oh, sure.

Q. Now, do you know of any reason why you should have different rules applying to certain mines in short haul territory, when it is the same short haul territory, as apply to other mines in that territory?

A. As I stated in my direct testimony, the Commission prescribed rates from Illinois mines to Illinois destinations that are on approximately 85 per cent of the H. & H. scale basis. The carriers——

Mr. Vesey: Now, Mr. Nelson, just a moment. I will object, if the Examiner please. That is not the answer to my question, and I would like to follow some continuity in this cross-examination, if I can. I ask the witness to cooperate with me and we will save immeasurable time.

Mr. Kaier: If the Examiner please, I think it is an answer.

[fol. 472] Exam. Trezise: Read the question.

(Question read.)

Mr. Vesey: If you know of any reasons, I would like to have them.

The Witness: Well, the Commission prescribed a rate from northern Illinois to Beloit. The carriers——

Mr. Biaett: Excuse me, just a minute. That rate applied from a number of mines in northern Illinois, and not just from the Wilmington mine, which Mr. Vesey is using in his comparison.

Mr. Vesey: Mr. Biaett, I appreciate your testimony a lot, but we have one man on the stand.

Mr. Biaett: Just a minute. You asked the question, using the distance from one mine, when the rate prescription was from an entire group.

Mr. Vesey: Mr. Biaett, he can answer my question.

Exam. Trezise: You can answer his question, if you have any reason why different rules for the construction of rates to this short haul territory should be applied, I think you have some answer to that.

The Witness: Mr. Examiner, I don't think that the fact the Commission prescribed a rate from northern Illinois to Beloit compels the carriers to use that rate as a yardstick in each and every instance in making rates from Fulton County to destinations in northern Illinois. They would be equally [fol. 473] justified at least in using other decisions or other rates as measuring sticks. We consider the present rate from Fulton County to Dixon as a reasonable rate. We consider the proposed rate as a reasonable rate.

Exam. Trezise: Well, Mr. Nelson, what you mean to say, is this true, is that this denomination of different rules, there may be great variation to those rules that apply in a short haul territory, and if the rates come out different it may be that some variation of those rules that have been used in this short haul territory have been applied. Do you subscribe to that?

The Witness: Yes, sir. You can't always use the same yardstick or the same measuring stick. Conditions differ and you have to use your judgment.

By Mr. Vesey:

Q. All right, do you know of any conditions that warrant different treatment, so far as rates are concerned on coals moving from Wilmington mine to Beloit, and from Fulton County mines to Dixon?

A. As I explained, we had to comply with the Commission's order in establishing rates from northern Illinois to

Beloit. We may not have considered those rates as maximum rates ourselves, but we had to comply with the Commission's order.

Q. In other words, you might take from that answer, so far as practical reasons are concerned, you know of none?

A. Other than the Commission's order, that was the reason.

[fol. 474] Q. That is the only reason you know of?

A. I think an illustration of what this adjustment be— you have two hauls approximately the same length, and you have rates in effect, the Commission orders certain rates from one point of origin to another destination. Carriers oppose the petition for the reduced rates—maintain that the previous rates were reasonable. It doesn't necessarily mean that because the Commission ordered the rate from one point to one destination reduced, that you have to reduce the rate from the second point of origin to the second point of destination, or to use that rate as a yardstick throughout the entire territory. They have just as much right to use other yardsticks. Now, the fact that the rate from Fulton County to Dixon is not unreasonably high in level indicates that it is not an unreasonable rate.

Q. Did you hear my question?

A. I heard your question. I am trying to answer it.

Q. Don't you know that your answer is not an answer to my question, Mr. Witness?

A. Well, I answered it two or three different ways. I don't know what way you want me to answer it.

Q. I asked you if you knew of any reason for making a distinction. Are there any other reasons?

A. Yes, the Commission's order in the Beloit case is a reason.

Q. Now, you gave that. Now I am asking you, as a rate [fol. 475] expert, do you know of any practical reason for making a distinction?

A. I don't know of any other reason, other than that. I think that is a sufficient reason.

Q. Now, on the basis of your last answers here, Mr. Nelson, and going back to the established differential, Fulton County, under southern Illinois, at Janesville, and then coming back toward the Fulton County mines, can you tell me of the reasons that exist or reasons that you know of why that differential of 79 cents at Janesville as you come to

Beloit, down to Rockford, should not be either 79 cents or greater?

A. You want to know why it was changed?

Q. No, I want to know if you know of any reasons why it should not be 79 cents or greater.

A. I don't know why it should be 79 cents.

Q. I asked you, on the assumption that the 79 cents at Janesville is correct, do you know of any reason why as you approach the origin group, that differential should not be the same or greater?

Mr. Biaett: I object to that question, in so far as it relates purely to differentials, Fulton County under southern Illinois, and not to the level of the rates from Fulton County as compared to the level of the rates to destinations in Wisconsin.

Exam. Trezise: Mr. Biaett, you can bring that out very well by questioning Mr. Nelson. I think Mr. Nelson can [fol. 476] answer that question.

Mr. Biaett: Well, it is purely a differential proposition. It has nothing to do with the issue which Mr. Nelson attempted to prove on his direct testimony.

Mr. Stadell: It isn't involved in this case at all, Mr. Examiner. It is involved in the complaint in Docket 28888, which is not now being heard.

Mr. Vesey: Oh, if the Examiner please, it is involved.

Exam. Trezise: If the differential, Mr. Nelson, to Janesville is 79 cents, do you think it should be less than that to points that are a shorter distance, like to Beloit? That is the question.

Mr. Vesey: That is it.

The Witness: I think, Mr. Examiner, the present adjustment to Beloit or to Rockford, or the proposed adjustment is a reasonable adjustment. I see no reason for changing it.

By Mr. Vesey:

Q. Now, will you answer my question, or the Examiner's question?

A. The differential, applying the rate to Janesville, was not prescribed by the Commission. It is a voluntary adjustment on the part of the carriers that was approved by the Commission, as they let it go into effect, and it doesn't necessarily mean you have to use that differential as a yardstick to Beloit or Rockford.

Q. Mr. Nelson, I asked you to assume——

[fol. 477] Exam. Trezise: Well, it is the wrong sort of a principle, Mr. Nelson, isn't it, in rate making, generally? This is the same question the Examiner asked before, and we are right back where we started, only this is a specific proposition, that ordinarily differentials are greater for the shorter distances than they are for the longer distances, when group adjustments are taken into consideration. That is the fact, isn't it, Mr. Nelson?

The Witness: Generally. But here is a case where we are comparing, in my opinion, short haul rates with long haul rates, comparing short haul rates that are not differentially related with long haul rates. Now, when you get up into Wisconsin farther, why, you can properly classify the Fulton County rates with long haul rates.

Exam. Trezise: Then you think it is all right as it is, because the rate to Beloit, for example, is a so-called short haul rate?

The Witness: That is right.

Exam. Trezise: And the rate to Janesville, for example, falls into a class of possibly you might call it a long haul rate or a group adjustment, and you think that your explanation was, as the Examiner understands it—we have got to have some answers here—that it is all right?

The Witness: You have got to draw a line somewhere, Mr. Examiner.

[fol. 478] Exam. Trezise: Well, then, it is all right?

The Witness: I think it is all right.

Mr. Vesey: Now, what is all right?

The Witness: The present adjustment.

Exam. Trezise: The Examiner understands that it is all right to have—well, I can take your illustration—to have a 60 cent differential to Beloit, southern Illinois over Fulton-Peoria, as compared with a 79 cent differential southern Illinois over Fulton-Peoria to Janesville. That is what the Examiner understands. Does that answer your question?

Mr. Vesey: I want to get from this witness just one answer, if I may, that is directly in answer to a question, and that is this:

By Mr. Vesey:

Q. Assuming the differential, Fulton County under southern Illinois at the northern point of Janesville, assuming that differential is a proper differential, do you know of any reason why as we approach the origin group, say Beloit, Rockford, as you come down, that that differential of 79 cents should be that or higher?

Mr. Biaett: Mr. Examiner, the witness stated at least ten times as you get back toward Fulton County you have no differential relationship.

Exam. Trezise: The Examiner doesn't understand your question exactly. Now, the facts, as I understand it, as developed here, is that the rate to Beloit is in the nature of [fol. 479] a short haul rate and the rate to Janesville is in the nature of a long haul rate, in the conception of Mr. Nelson, and that there is a difference in the method of making rates, and that, therefore, it is all right to have it the way it is.

By Mr. Vesey:

Q. In other words, Mr. Nelson, you do not subscribe to the principle as enunciated by the Examiner here, that as your mileages decrease, the differentials—I am talking now hypothetically—the differentials should decrease? You don't subscribe to that theory?

A. Not when you are dealing with short haul rates, no, sir. The differential which applies at Janesville isn't a general differential that exists in Wisconsin. There are numerous other differentials up there that you might use as a yardstick in measuring the differential to Beloit, besides Janesville.

To illustrate the differential, if you want to call it that, at Madison it is 61 cents. Now, that is beyond Janesville. I could pick out some more points up there that have different differentials.

Exam. Trezise: There is not much sense to those differentials, is there?

Mr. Vesey: I was trying to establish that fact, if the Examiner please. I don't know how I am going to do it, but I think eventually we might arrive at it.

Exam. Trezise: Can't you establish the fact the differ- [fols. 480-481] entials are at variance, and you have already

established that Mr. Nelson thinks it is all right the way it is.

Mr. Stadell: Whether there is any sense to them or not, is a matter of argument after you have established the facts.

The Witness: Mr. Examiner, there was no doubt some reason for that, what you call, hodge-podge differential adjustment up there. If you will read the announcement that was made by the Commission at the time the rates were established, the agreement was published in a notice, that they had some strings tied to it, a minimum rate of $1.90; to observe further minimum present and suspended rates, whichever was lower. Now, there must be some reason. I can't recall what those reasons were.

By Mr. Vesey:

Q. In other words, you don't know what those reasons are?

A. That was a long time ago.

Exam. Trezise: We will adjourn until 10 o'clock tomorrow morning.

(At 5 o'clock P. M. March 23, 1943, adjourned to March 24, 1943, at 10 o'clock A. M.)

[fol. 482] Morrison Hotel, Chicago, Illinois,
March 24, 1943.

Met, pursuant to adjournment, at 10 o'clock a. m.

Before R. N. Trezise, Examiner, Interstate Commerce Commission. F. B. McElroy, Illinois Commerce Commission.

APPEARANCES:

As heretofore noted.

PROCEEDINGS

Exam. Trezise: All right, gentlemen; when you are ready, we will begin.

C. J. NELSON, resumed:

Cross-examination (Cont'd).

By Mr. Vesey:

Q. Mr. Nelson, I believe last night you testified with respect to certain differentials to the affected territory, and you said that because of this being short haul territory there were no recognized differentials from the Fulton County fields to the destinations involved; I take it from that answer that in so far as the comparative rates are concerned to these destinations you are making a technical distinction between differentials and differences in rates; is that right?

A. Differential is uniform difference in rate, and differs [fol. 483] from differences to the extent the differences vary.

Q. So that in this short haul territory, in speaking of the variations, I take it we have to talk of them from the point of view of differences in rates from point to point; that is, as between any two origin groups—at the same destination.

A. Well, if you were comparing one rate with another, of course it would be a difference.

Q. Now will you please tell me, with respect to these Fulton County coals, the limits of this short haul territory, in your opinion, in terms of miles; in other words, so I may have the breaking point following your testimony, between that area and where we have recognized changes, differentials, uniform basis from the Fulton County group and that territory where we have these point to point rates.

A. Well, I would say the short haul territory exists in northern Illinois up to the Wisconsin state line; and then between that line and farther up in Wisconsin there should be some grading of differentials or differences; we get into the differential territory. I think the fact that in the southern part of Wisconsin there are so many differences in rates, Fulton County versus southern Illinois, illustrates the necessity of following a plan of that kind.

Q. In other words, I take it, then, putting it in terms of specific miles that answer that the limit of the short haul territory going to the north would be somewhat in the [fol. 484] neighborhood of 175 miles from Fulton County.

A. Well, I don't know how far it is to the state line.

Q. Don't you have any definite idea as to where that breaking point should be?

A. Well, I just explained that I thought——

Q. I mean in terms of miles, about what it should be.

A. I don't know how far it is——

Q. Well, assuming, Mr. Nelson, that we are desirous here of getting rid of this hodge podge of rates—where, in your opinion, should this limit be; that is, where you break from short haul to that territory where we are going to have definite differentials, uniform differentials, a definite grade?

A. Well, I just explained my views.

Q. Well, I mean in terms of miles, about where should it be?

A. The average mileage from the Fulton County group to Beloit is 171 miles; Beloit is on the state line.

Q. Would that be a good point, in your opinion, to have the differentials between the short haul and the uniform differential territory?

A. Yes, I think so; you would have to maintain the same diffential at Beloit, the same difference, you might say, at Beloit that you maintain at Rockford, if you make the Beloit rate 15 cents higher than Rockford.

Q. So that would be a breaking point there?

A. You understand, Mr. Vesey, that prior to this time [fol. 485] it has been the position of the Fulton County operators that their rates should not be related to the other rates. They have taken that position before.

Q. I do not want to get off on that tangent now; but since you raise that question——

Exam. Trezise: Have that a little clearer, Mr. Vesey; breaking point, what do you mean?

Mr. Vesey: Breaking point between the short haul territory, where we have point to point rates, and territory where we are going to have uniform differentials.

Exam. Trezise: You had in mind that that was the initial point where the differential would begin?

Mr. Vesey: That is what he is telling me.

Exam. Trezise: Thank you; I am sure that makes it clearer to my mind.

By Mr. Vesey:

Q. Now, your own terms of the short haul territory, as I view it, what you mean is that is an area around the origin

group that would have a circumference of approximately, or a radius of 171 miles, generally speaking.

A. I said the distance to Beloit, on the state line, is 171 miles.

Q. Wouldn't this short haul territory have a uniform range from the origin group in all directions, should it not?

A. I would consider northern Illinois short haul territory.

Q. So then it would apply to the northeast; now, should [fol. 486] it not apply in all directions around this origin group, in so far as your short haul territory is concerned?

A. Of course, the rates involved in this proceeding do not include all of northern Illinois rates.

Q. I know that; I am just getting your idea of short haul territory; I say, should it not circumscribe an area rather uniform, in so far as radii are concerned?

Exam. Trezise: You mean from the Fulton group?

Mr. Cardy: You are talking now, Mr. Vesey, from Fulton?

The Witness: That is right.

Mr. Vesey: That is right.

The Witness: As I understand your question, you are asking me if short haul territory should extend 171 miles in each direction from Fulton-Peoria.

By Mr. Vesey:

Q. I am asking you if that territory should not have a circumference, so to speak, with approximately the same radials in each direction; now, you took one of them at 171 miles; I am asking you, shouldn't the territory be as sort of a ball, when you are up looking down?

A. I do not understand your question.

Exam. Trezise: May I inquire there, Mr. Nelson, you have already said, or have you, that you thought that from the Fulton-Peoria group to northern Illinois was short haul territory; didn't you say that?

The Witness: Yes, sir.

[fol. 487] Exam. Trezise: That is what he said one time; now you are trying to get him to say that is not true, or that there are some distances that are more than 171 miles, or 171 miles from Fulton-Peoria, in northern Illinois, that is not short haul territory.

Mr. Vesey: No, I want to find this out, if the Examiner please; whether in his theory of rate making, this expert

witness, for instance, we have short hauls now going to the north and northeast with a radius going to Beloit of 171 miles,—whether or not short haul territory as such with respect to this production group should not be a rather uniform circumscribed territory with respect to this origin group.

Exam. Trezise: All right, Mr. Nelson; answer that.

The Witness: I don't think you can bow right to the line, 171 miles in each direction.

By Mr. Vesey:

Q. I do not mean 171 miles; it might be 170 in one place, and let us say 200 in another; but it would be a fairly uniform radial area with respect to group, should it not?

A. I don't know how I can explain it any clearer than I did.

Q. I say, should it not be rather uniform?

A. I classify the rates from Fulton County to northern Illinois as short haul territory.

Q. Mr. Nelson, that is not my question; I asked you, should not that territory be rather uniform?

[fol. 488] A. I do not want to restrict it to any certain mileage.

Q. I do not care about the 171 miles; I am not asking you that; I am asking you as to the uniformity of the area.

A. I do not understand what you mean by uniformity, unless you restrict the mileage.

Q. That is too deep a question?

A. I do not understand your question.

Q. What is it you do not understand?

A. You want me to restrict it to mileage, and you say not; I have already said I consider the rates from Fulton County, Illinois, as short haul rates.

Q. Let me ask you again: shouldn't the territory embraced within that area described as short haul by you be an area with a circumference of approximately the same radials in distance from the origin groups in each direction?

A. I do not think you can do it that way, Mr. Vesey.

Q. You do not think you can do it that way?

A. No, sir.

Q. What is wrong with our describing a territory from the Fulton County group just that way?

A. Well, you might have some distances in northern Illinois that were greater than 171 miles; you might have

some that were less, much less; I don't think you can confine it to any certain distance.

Q. Is that the only objection you have to that proposition? [fol. 489] A. I really don't understand your question.

Mr. Vesey: All right.

Mr. Stadell: We understand that Mr. Vesey is advocating that now as a proposition?

Mr. Vesey: I am advocating nothing; I am just trying to cross-examine the witness, to find out what his views are.

By Mr. Vesey:

Q. Now, in a 13th Section *proceeding such as this* is, shouldn't we inquire, in determining whether or not any intrastate rate was discriminatory not only as to the rates across into one state but the rates across into other states, if such there be, to points of equal distance away, to determine whether or not a change in the intrastate level, in order to come under your theory, alleviating of discrimination in some directions, to ascertain whether or not that would bring about discrimination in another direction, into another state.

A. I do not understand that question.

Q. Maybe I can simplify it here: Assuming that it were found the intrastate rates were discriminatory against interstate rates on movements in this case to Wisconsin, but change the rates in Illinois to remove that discrimination would result in a discrimination against interstate movements, or against movements to destinations in Iowa; is it your thought that the change should be made, regardless of its effect in Iowa, in order to remove the discrimination in Wisconsin?

Mr. Biaett: Mr. Examiner, is Mr. Vesey's thought that [fol. 490] discrimination does exist as to Iowa?

Mr. Vesey: I am just asking the question.

Mr. Biaett: There must be some basis to the question.

Mr. Vesey: There is a basis.

Mr. Biaett: The basis is not in the record as yet.

Mr. Vesey: That is right.

Exam. Trezise: Well, if Mr. Nelson knows what he ought to prove in a 13th Section case as to that question, he can answer it, unless—do you know what we have to prove in a 13th Section case, to constitute a violation of the Interstate Commerce Act?

The Witness: You have to show that the preference would produce the rates that are in the proceeding here, compared with the rates to interstate points.

Exam. Trezise: Well, do you not sometimes leave it to your lawyer to determine what you have to prove in a 13th Section case, rather than having a rate man testify as to what the law is and what constitutes a violation of the 13th Section?

The Witness: I would think so.

Exam. Trezise: Mr. Vesey asked Mr. Nelson questions concerning what the facts are as to the rate situation.

Mr. Vesey: All right, Mr. Nelson: Are you acquainted with industries at Dixon, Illinois?

The Witness: To a limited extent. Dixon is not served [fol. 491] by my railroad; I know something about the industries there.

By Mr. Vesey:

Q. It is one of the representative points?
A. Yes, sir.

Q. Selected by the carriers?
A. Yes, sir.

Q. You are one of that committee selecting it?
A. Yes, sir.

Q. Are you acquainted with the competition between industries at Dixon, let us say, and industries at LaSalle, Illinois?

A. I know that there is a cement mill at Dixon, and there are cement mills at LaSalle.

Q. How did you happen to know that?

A. Well, I told you I was familiar with the industries at Dixon, to some extent.

Q. Is that because in so far as the rates are concerned, it is very important to know that fact?

A. Well, when you have been in touch with coal traffic in this territory for a number of years, you know.

Q. In other words, the minute we mention those two cement mills—the minute we mention Dixon those two cement mills come to your mind?

A. You mentioned LaSalle and the number of cement mills at LaSalle.

Q. Are you acquainted with the cement mill, then, using your verbiage, at Linwood, Iowa, in the Davenport switch [fol. 492] ing district?

A. Yes, sir.

Q. Isn't that true, that on account of those cement industries that you chose to use——

Mr. Biaett: I object; Mr. Nelson did not choose to use any cement industries; Mr. Nelson—Mr. Vesey asked him questions, and he answered in the affirmative, that he was acquainted with them.

Mr. Vesey: I never heard of a cement mill until he mentioned it; did you?

Mr. Biaett: Why, certainly, I did.

Exam. Trezise: Go ahead, Mr. Vesey.

By Mr. Vesey:

Q. I say, isn't that a very competitive industry——

Mr. Biaett: I object; this witness has not been qualified to testify with respect to the degree of competition in the cement business in this territory, or any other territory.

Exam. Trezise: Let the witness answer, whether he is qualified to do that. Mr. Vesey propounds these questions outside of the cross-examination, as I see it; but it may be connected with it.

Mr. Vesey: I am going to connect it in due course, if the Examiner please.

Exam. Trezise: Mr. Vesey asked a question; and maybe Mr. Nelson doesn't know, and maybe he does.

[fol. 493] The Witness: I know there is a cement mill at Linwood; I know there is a cement mill at Dixon, and cement mills at LaSalle. Now, the extent that they compete with each other, I am not in position to say. There are many cement mills throughout the Central Western Territory.

By Mr. Vesey:

Q. In other words, you don't know whether they are competitive or not.

A. Well, I am not marketing, handling or selling their cement.

Q. By the way, Mr. Nelson, suppose I were to ask you that same question with respect to the other industries in the affected territory here, the compared territory and

Iowa, would your answer be the same as the answer you have just given me with respect to cement?

Exam. Trezise: He means as to the detail of the competition and the intensity of it.

Mr. Vesey: Exactly.

The Witness: Yes, sir; I think it would.

By Mr. Vesey:

Q. In other words, you don't know anything about the competition, one point as against another, or the industry; is that right?

Exam. Trezise: Now think that over; you did not say that before. Now if you want to say that, go ahead; but that is another thing.

By Mr. Vesey:

Q. In other words, you don't know anything about the competition—I will extend it—with respect to the Fulton [fol. 494] County coal between points in the affected territory and the points in the compared territory and the points in Iowa; is that right?

The Witness: I know that competition exists, but I cannot tell you the details and extent of the competition.

By Mr. Vesey:

Q. How do you know the competition exists?

A. I acquired this knowledge in various ways.

Q. Just give me two points now where competition exists, and tell me what that competition consists of.

Mr. Blaett: Mr. Examiner, Mr. Nelson stated that he was familiar with the competition in a general way; and that is an entirely different question from the question which Mr. Vesey is now putting here. He has not laid the basis for any such answer.

Exam. Trezise: All right; Mr. Nelson has stated that he *did* something about the competition; now Mr. Vesey can ask him if he knows any one point that competes with another point. He is entitled to do that. He can answer no, if he wants to.

Mr. Vesey: Yes, I take it, that it goes with it; although I am speaking only in so far as coal is concerned; users of coal.

The Witness: I understood you were talking about cement.

By Mr. Vesey:

Q. That is right; it uses coal, doesn't it?

A. Surely.

[fol. 495] Q. Substantial user of it?

A. Well, the producer of cement at Dixon would naturally compete with producers of cement at LaSalle and Linwood, and Mason City, and Chicago; Indiana Harbor, St. Louis, Missouri; wherever mills are located, wherever they attempt to market the cement, they must meet the competition of the other producers.

Q. Now, where the distances are comparable from the origin groups to the destination, in situations such as cement, do you know of any reason, Mr. Nelson, why the rate from that origin group on coal to the several competitors there should be different?

A. Well, there may be some of the rates now that are depressed rates; and I do not think that they should be used as yardsticks in making other rates.

Q. Except where the rates are depressed, would you say there would be no other differences; I mean no other reason why there should be a difference.

Exam. Trezise: The whole question assumes that the distance is the same, and the circumstances are the same.

Mr. Vesey: I said comparable distances; that is right.

The Witness: Well, it is possible to have two rates between different points of approximately the same difference that would not be the same; and both of them would be reasonable rates.

[fol. 496] By Mr. Vesey:

Q. That is not what I asked you; I asked you, do you know any reason why, for instance, where the distances would be comparable serving a competitor, let us say cement, do you know any reason why from the same origin group there should be a difference in the rates?

A. There might be reasons.

Q. Do you know of any?

A. There might be reasons; we would have to know all the facts pertaining to conditions.

Mr. Vesey: Mr. Examiner, I am asking him if he knows of any reason. I do not care what anybody thinks; I am asking his opinion; does he know of any reason.

The Witness: Where rates apply over more than one line, compared with rates that apply over one line; that might be a reason.

By Exam. Trezise:

Q. For a difference?

A. For a difference in rates; yes, sir.

Mr. Biaett: For a difference in transportation conditions?

The Witness: Another reason might be terminal charges that might be involved; there might be various reasons for differences in rates.

By Mr. Vesey:

Q. All right; do you think of any others?

A. Not right now.

Q. Now you have given me two possibilities; does either [fol. 497] one of the two apply in so far as Fulton County coals are concerned; moving to the cement plant at Dixon, the cement plant at LaSalle, or the cement plant at Linwood, in the Davenport switching district?

A. Well, the rates to Dixon——

Q. I am not talking about rates; I am asking you whether either one of those two factors you just mentioned applies at those three points from the Fulton County group.

A. Yes, sir.

Q. All right; which one, or both?

A. I started to explain the rates to Dixon apply over two lines, the rates to LaSalle over one line.

Q. Well, didn't you tell me yesterday under cross examination, Mr. Nelson, that in your opinion here average distances should be taken from groups; I think that you also said that the rates ought to be the same from the group to the given destination.

A. Generally that is true; yes, sir.

Q. Is that compatible with what you just said here, that because it moves over two different railroads, that that is a reason for making a distinction in rates?

A. I think that is a very good reason.

Q. Two lines have a difference in rates.

A. Where you have more than two lines, why, there is still greater reason.

Q. Is that why on the Burlington you reduced your Fu- [fol. 498] ton County coals at Victoria 5 cents below other Fulton County coals?

A. Victoria is not within the Fulton County district.

Q. Well, it is within the Fulton County field.

A. Quite a ways from Fulton County.

Q. What do you mean?

A. It is east of Galesburg; Fulton County is south and east of Galesburg. The distance from Fulton County to Victoria by rail is approximately 50 miles; at least, that is my recollection.

Q. Well, I will come to that in a minute: going on with your—isn't it true that Linwood, Iowa, is also served by two lines?

A. Linwood, Iowa, is in the switching district of Davenport, located on the rails of the Rock Island and the Milwaukee.

Q. So its position is the same as Dixon?

A. No, I wouldn't think so.

Q. Served by two lines?

A. The rate applying from Fulton to Davenport would automatically apply to Linwood.

Q. All right, Mr. Nelson; at least, that is one reason, in your view, for having a distinction; is that right?

A. Yes, sir.

Q. Now, the Interstate Commerce Commission has prescribed as a maximum rate, has it not, the rate from Fulton County to Linwood, Iowa, of $1.25?

A. Also to Davenport and other points on the west side [fol. 499] of the river there; they prescribed that in Docket 23130.

Q. And the cement plant we are talking about is at Linwood.

A. That is right.

Q. What is the distance from the Fulton County field to Linwood, Iowa, or Davenport, since it is in the switching district?

A. I think it is 118 miles; I am not sure.

Exam. Trezise: You mean the average distance from Fulton County?

By Mr. Vesey:

Q. The average distance; that is right.

The Witness: This exhibit shows to Davenport 110.7 miles from the Fulton County field. At the time the rate was prescribed by the Interstate Commerce Commission——

Mr. Vesey: I am not asking about that;——

Mr. Blaett: Let the witness answer.

Mr. Vesey: I asked him what the distance was; I asked him for nothing else.

Exam. Trezise: I think that is all right; he asked the distance and he got the distance.

Mr. Cardy: Mr. Examiner, it is 114 miles, as shown by the record here; in other words, it is 110 miles to Davenport, plus 3 or 4 miles to Linwood,—to keep the record straight.

Exam. Trezise: Now, what the Commission found, you can go into that on cross examination, or anything else.

[fol. 300] By Mr. Vesey:

Q. Now, Mr. Nelson, what is the switching absorption charge there at Linwood, on coal from Fulton County via your own line?

A. I do not remember; I would have to look that up.

Q. You don't know what it is?

A. I do not remember what it is.

Q. Would it refresh your recollection if I were to tell you it was 30 cents per ton?

A. I do not think that is right.

Q. That does not strike a responsive chord at all?

A. No, sir.

Q. You know you furnish it, though.

A. We furnish the switching charge?

Q. No, no; hardly. Do you know that you have that switching charge on moving coal from Fulton County in there, do you not,—at Linwood?

A. We would have to absorb the switching charge to make delivery.

Q. What is your best recollection as to what that charge is?

Mr. Biaett: I object.

By Mr. Vesey:

Q. Will you find out what it is.

Mr. Biaett: I have an objection; if Mr. Vesey wants the actual switching charge——

Exam. Trezise: He says what is your best recollection; [fol. 501] he didn't even want that kind of answer. What is your best recollection?

Mr. Biaett: I mean the tariffs are the best evidence of what the switching charge is.

Exam. Trezise: He asked that question; I don't know what good it would do if he got the best recollection, but he has asked it.

Mr. Vesey: Will you supply that to me this afternoon when you return to the stand; ascertain it during the lunch hour.

The Witness: I will endeavor to; yes, sir.

By Mr. Vesey:

Q. Now, what is the rate from Fulton County, Mr. Nelson, on the same coal going to the cement plant at LaSalle, Illinois, if you know?

A. $1.25.

Q. Now, is that the same rate that applies on the movement of that coal to Davenport? I think you answered that once, but I want to be certain that is in the record.

A. That is the same rate that applies to Davenport.

Q. What is the distance from Fulton County to LaSalle?

A. The average distance is 98.8 miles.

Q. 98.8 miles.

A. Yes, sir.

Q. Now, then, what is the rate, both present and proposed, from Fulton County to Dixon, Illinois, when you [fol. 502] get on this other cement plant?

A. The present rate, $1.50; and the proposed rate is $1.55.

Q. And what is the distance from Fulton County to Dixon, Illinois?

A. 123.8 miles, the average distance.

Q. 123.8 miles.

A. Yes, sir.

Q. Now, Mr. Nelson, if we had nothing else before us but those three illustrations, will you tell me whether or not in your opinion there is a lower level of rates intrastate than there is interstate on Illinois coal from Fulton County?

Exam. Trezise: Go ahead, Mr. Nelson; just answer it straightforward.

The Witness: Lower level of rates intrastate?

By Mr. Vesey:

Q. That is right, than interstate.

A. When you compare the level of the rate to Davenport with the level of the rate to Dixon, you have a lower level of rate to Davenport.

Q. And that is prescribed, that is the prescribed maximum rate on that coal, by the Interstate Commerce Commission, is it not?

A. That is the maximum rate prescribed by the Interstate Commerce Commission at the time the order was issued.

Q. And you knew that when you made the proposed in- [fol. 503] creases in this case, did you not, in the case of the movement of coal from Fulton County to Dixon, didn't you?

A. I explained yesterday——

Q. I just asked you, did you know, or didn't you know, Mr. Nelson.

Exam. Trezise: Just tell him yes, you knew it.

The Witness: Sure, I knew it.

By Mr. Vesey:

Q. And in spite of that knowledge, with reference to the competition you spoke of between cement plants, in spite of your knowledge as to distances involved, in spite of your knowledge that the Interstate Commerce Commission had prescribed a maximum rate to Linwood, you still

proposed to increase the intrastate rate to Dixon; didn't you?

A. Yes, sir; and I started to explain the conditions pertaining to the movement of Fulton County coal to Linwood today are different than they were when the order was issued.

Q. Do you know of any reason——

A. I would like to finish.

Q. I am sorry.

A. I stated in my direct testimony at that time there were 8 origin points in the Fulton County district, and the average distance from the field was 98 miles. Now there are 28 origin points, 27 origin points from the Fulton County district, and the average distance to Linwood is 116 miles, approximately, 115.9; to Davenport is 110.7. [fol. 504] So there has been a change in the conditions since the order was issued.

Q. You say a change in conditions.

A. Yes; the Fulton County field has expanded; more mines have been developed; additional origin points exist.

Q. Are you telling me that there is a relationship between rates and the number of mines that you find in a given field?

A. No; increasing the field though, has increased the distances.

Q. In other words, the more mines you get in a field the higher the rates should be, so that you get more money out of the field; is that the idea?

A. I am telling you that the development of the field increasing the mines, to spread out, has increased the average distance.

Q. Has increased the average distance?

A. Yes, sir.

Q. In other words, you have a longer haul now to Davenport than you had at the time the rate was fixed.

A. The average haul today is longer than it was at the time the rate was prescribed.

Q. Is that true as to the actual haul from mines to Davenport—in other words, if you had made a comparison in this instance, as you did in the case of the northern Illinois district to the short haul points to the mine moving the coal, would that be true, that the distance increased from [fol. 505] Fulton County to Davenport?

A. I do not understand your question.

Exam. Trezise: Do you mean the weighted average distance?

Mr. Vesey: Well, in effect, it would be the weighted average; yes.

Exam. Trezise: Maybe he would understand that.

Mr. Vesey: I was just asking him on the illustration he used, northern Illinois; he said we must forget about the average, just use the mine moving the coal; so I am asking about the mines moving the coal from Fulton County to the cement plant at Linwood.

The Witness: Well, the mines that are supplying the coal to Linwood, I think, are shipping it by barge.

By Mr. Vesey:

Q. Well, do you know?

A. They were until the river froze over.

Q. They were until the river froze over?

A. Yes.

Q. Is Davenport a short haul destination, under your theory, taking into consideration coal moving from Fulton County mines?

A. Yes, I say it is. It is not in Illinois, though.

Q. Well, I take it that the short haul territory is not circumscribed because of a state line, is it?

A. Not necessarily.

Q. In other words, you look at the actualities in move-
[fol. 506] ments, do you not, in determining the short haul territory, rather than state lines, or colorings on maps?

A. State line does not make any particular difference.

By Exam. Trezise:

Q. Now you said that distances to Illinois are independent, the destinations in northern Illinois, independent of the business, you considered them short haul territory; now, you say that distance doesn't make any difference; isn't that right, Mr. Nelson? Or did the Examiner misunderstand? Or are you still standing by your statement that you think that the distances to northern Illinois from Fulton-Peoria group are in short haul territory?

A. I do; yes, sir.

Q. Now you are standing by that? I do not like to get the record confused. One time he says distance doesn't

make any difference, and then the next time I get a little confused, Mr. Nelson.

A. I do not believe I said——

Mr. Cardy: Mr. Examiner, it is going to be pretty difficult for us to use the term long haul and short haul territory; the only question is what the rate is for the service, regardless of distance. We cannot define short haul territory in a particular point, or long haul territory.

Exam. Trezise: Well, pardon me for saying anything; go ahead.

Mr. Cardy: When they say rates in short haul territory, [fols. 507-508] I don't know what they mean.

By Mr. Vesey:

Q. Now, what is the difference between the Fulton County rate to Davenport, Mr. Nelson; that is, from Fulton County, and the rate from southern Illinois to Davenport, Iowa.

A. $1.00.

Q. That is $1.00 difference there; now, Mr. Nelson, do you know of any reason why the cement plant at Dixon should be required to pay a higher freight charge for the same identical coal in Fulton County than the interstate cement plant over at Linwood, Iowa?

A. I do not consider the rate to Linwood a proper rate; I think it is too low.

Q. I did not ask you that, Mr. Nelson; I asked you if you knew any reason why the one should be preferred against the other; if you know a reason, please tell me; if you don't, say you don't know.

Mr. Stadell: I object to the assumption in the question, Mr. Examiner, that there is any prefergence or prejudice there. It certainly has not been shown.

Mr. Vesey: $1.25 looks just a little different to me than $1.50; I don't know whether it does to you.

Mr. Cardy: Mr. Nelson, if I understand you, did you say that this interstate rate was too low?

The Witness: That is my opinion.

[fol. 509] The Witness: Well, there is a difference in the handling of the coal in one-line haul in the majority of instances from the field to Davenport, while to Dixon it is a two-line haul. I consider the rate to Davenport a depressed rate, and the rate to Dixon is a reasonable rate.

By Mr. Vesey:

Q. Well, is Davenport the depressed spot that you have been talking about in your testimony; does it move from Illinois now over to Davenport?

A. Davenport or Linwood.

Q. What do you have here now, just a changing spot; wherever you go it is depressed, so far as the carrier rates are concerned? I mean, I would like to pin the tail on the donkey some place, Mr. Nelson.

A. The point I am trying to bring out is you selected the rate to Linwood, Iowa, which is a very low rate; and you are trying to use it as a yardstick in measuring other rates for comparable distances. I do not think that we should use the lowest rates in the country to make our coal rates with.

Q. What question are you answering, of mine; so that I may follow you.

A. I am trying to answer the last one.

Mr. Vesey: Read the question.

Mr. Stadell: The witness has answered the question, to [fol. 510] the best of his ability.

(Question read.)

Exam. Trezise: May the Examiner understand that this pinning the tail means to change his direction or attention to Davenport, instead of Linwood? They are right close together, aren't they?

Mr. Vesey: Yesterday when we were asking about rates the depressed spot was in Illinois; now we are jumping over to Iowa. I would like to stabilize, find out where the depressed spot is. Or is it true that wherever you go now the rate for the purpose of making comparison, it is depressed? In other words, we have depressed rates everywhere.

Exam. Trezise: Well; let us answer; where is the depressed spot, do you know that answer; you can tell him that.

The Witness: I call the rate from Fulton County to Davenport a depressed rate.

Exam. Trezise: That is one of the depressed spots.

Mr. Vesey: Fine.

By Mr. Vesey:

Q. Now, with respect to those two cement plants, one at Linwood and one at Dixon, both using the same coal from Fulton County, do you know of any reason why one plant should have to pay a higher freight rate for its coal than the other plant has to pay for its coal?

A. When one rate is a depressed rate and the one is not, I do not think it is necessary to reduce the one to the de- [fol. 511] pressed basis.

Q. Is that the only reason that you know?

A. I explained the difference in the haul.

Q. I am talking about the two customers now, the two receivers of coal; do you know of any other reason than just that one?

A. I think that the receivers of coal should pay a reasonable rate.

Q. Now, Mr. Nelson, I asked you a very simple question, and I would like just a simple answer, if it is possible to get one.

A. You might compare the rate to Dixon from Fulton County with the rate from Mason City; there are cement mills at Mason City.

Q. Well——

Mr. Vesey: Will you please read the question back to the witness.

(Question read.)

The Witness: Yes; I answered that question.

By Mr. Vesey:

Q. Well, what is the reason?

A. One reason is you have a two-line haul to Dixon versus a one-line haul to Linwood.

Q. I am talking about the two customers.

A. The transportation is different; that is one reason.

Q. It is your contention that there is a difference in transportation conditions between Fulton County and Linwood, Iowa, and between Fulton County and Dixon; is that right? [fol. 512] A. That is my opinion; yes, sir.

Q. And aside from that, is there any other reason why one customer should have a higher rate on the same coal than the other?

A. I do not think you can equalize——

Q. Just answer my question, please.

A. That is what I am trying to do, is answer your question. I do not think that the carriers can equalize freight rates all over the United States, so that each cement mill will pay the same rate on coal. I do not think that is possible.

Q. If that answer be correct, that the difference is to be ascribable to the difference in transportation conditions, isn't it true, Mr. Nelson,—and I ask you this just to save time—isn't it true that the transportation conditions between Fulton County and Dixon are far superior to the transportation conditions between Fulton County and Linwood, looking at it purely from the carrier's point of view?

A. Far superior to Dixon?

Q. Yes, looking at it from the carrier's point of view.

A. No, not in my opinion.

Q. They are not, in your opinion; don't you have to cross a bridge going into Davenport from Fulton County?

A. Certainly.

Q. And you do not have a bridge between Fulton County and Dixon, do you, a bridge crossing?

[fol. 513] A. No.

Q. And don't you have an absorption charge which you just spoke of, going into Davenport, which you do not have when you go to Dixon?

A. Yes; but the bridge is owned by your own railroad; and you do not have any bridge toll to pay.

Q. Whose own railroad, the Burlington Railroad?

A. The Rock Island have a bridge across the river there, and the Burlington and Milwaukee jointly, they cross the river.

Q. You mean that you have no bridge charge across there?

A. We own the bridge.

Q. In other words, the bridge just grew up overnight.

A. Sure, it cost something to build it.

Q. Isn't that an adverse transportation condition?

A. Well, it costs something to build a bridge.

Q. And haven't you testified from time immemorial in rate cases, when it came to questions of cost of transportation, with its reflection into charges, that the bridge costs and the cost of construction throughout has to be considered by both this Commission and the Illinois Commission.

A. That is right.

Q. Why do you change your testimony at this time?

A. I was just telling you we owned the bridge, and there wasn't any bridge toll.

Q. You just want me to know that? Now, you publish [fol. 514] joint line rates also, don't you, from Fulton County mines to Linwood, Iowa?

A. Yes.

Q. Now, assuming that the switching charge amounts to something, and remembering what you just said about the bridge, I now ask you again, comparing the two hauls, the same coal, the same origin points, if the transportation conditions on the movement to Linwood are not poorer, or using any other term you want to use, than the transportation conditions existing on the haul from Fulton County to Dixon, Illinois.

Mr. Stadell: I object to the manner of that question. Mr. Vesey has not permitted the witness to state his opinion with reference to transportation charges from Fulton to Dixon. He stopped him every time he started to compare. He just let him make a few statements with reference to rates to Linwood.

Mr. Vesey: That is unfair criticism; I do not think I have limited him.

Mr. Stadell: The witness started to tell you about the rates—

Mr. Vesey: It is just a difference in the way we practice; that is all.

Exam. Trezise: All right, Mr. Vesey, go ahead; what is the question?

(Question read.)

The Witness: I answered that. In my opinion, they are [fol. 515] not poorer.

By Mr. Vesey:

Q. Would you say they are the same?

A. No, I would say they are better.

Q. Now tell me why are they better?

A. Because of the fact that to Dixon there is a two-line haul.

Q. Just go slowly; give them to me in one, two, three order now, the reasons why the transportation conditions be-

tween Fulton County and Dixon are better than between Fulton County and Davenport, or vice versa.

A. Well, I have given it to you two or three times.

Q. Now will you please stafe it for me.

A. In the case of Davenport it is a one-line haul; and to Dixon it is a two-line haul. On a two-line haul you have to divide the rate between two roads. I consider the rate to Davenport a depressed rate; it should properly be higher.

Q. Is rate a transportation condition?

A. No.

Q. Just confine yourself to the difference in transportation conditions, Mr. Nelson; that is what I want to know, and I want to know your reasons in one, two, three order.

A. I have given you my view.

Q. Do you have any others?

A. No.

Q. Now, the only one you have given me is the fact it is two-line haul to Dixon and one-line haul to Davenport; now, [fol. 516] isn't it also a two-line haul to Davenport, and doesn't the Burlington publish joint rates to Linwood?

A. We do to Linwood; not to Davenport.

Q. So that as far as your one and only reason is concerned, it fades when you remember your own joint rates.

A. Well, we have our own rails to Davenport; we can haul the coal all the way.

Q. Was there ever submitted to you, Mr. Nelson, or submitted to your committee representing the carriers, or did you yourself make any specific study to determine the extent to which the destinations in the affected territory were similar to the destinations in the compared territory, in so far as competitive industries are concerned?

A. There has been some investigation made; yes, sir. And there will be some witnesses testify regarding that. I did not make any special investigation myself.

Q. You did not make any yourself; was there a report or study made by your committee of carriers which was submitted to you?

A. It was not submitted to me, no.

Q. Was it in writing?

A. Not that I know of.

Q. Did you ever see one in writing, with respect to a comparison between those destinations?

A. No, I have not seen anything in writing.

Q. At no time?

[fol. 517] A. I answered you, no.

Q. And you would know if such a report or study had been made and submitted to the carriers?

A. There will be some testimony placed in the record, Mr. Vesey. You better address your questions to that witness.

Q. Bearing on that question.

A. Yes; there will be some testimony placed in the record.

Q. In other words, then, so far as you are concerned, the only knowledge which you have with respect to that competition is just a general belief that such competition exists.

A. General knowledge that I have acquired over a period of years, looking after coal traffic in northern Illinois territory; I naturally acquire some knowledge regarding conditions in the territory. We are comparing here, Mr. Vesey, rates to this northern Illinois territory that are depressed rates with rates to the interstate points and with rates from interstate points to the northern Illinois territory; and we are showing where they are on a depressed basis and should be increased.

Q. Well, now let us just—your representative points in the affected territory; as I understand your testimony, you are representing to these two commissions that in so far as coal is concerned, that these destinations are representative of the entire territory, the 98 points involved in this proceeding; is that right?

A. We selected these destinations as representative; yes, sir.

[fol. 518] Q. And if it should develop as to these destinations they are not representative, then, I take it, you would agree that you had failed to make a proper showing with respect to the necessity of increasing the rates into this territory.

A. You are making an assumption there; I do not want to agree to any assumption.

Q. You would not agree to that?

A. I would have to find out the facts first.

Q. That is, the competition at Amboy between Fulton County coals on the one hand and any other coal that you want to take from Indiana, Illinois, or western Kentucky at Amboy.

A. Coal competes with coal——

Q. I say, what is the competition between Fulton County coal and these other coals?

A. You are asking me where the coal comes from, to Amboy?

Q. No; I am asking you what is the nature of the competition between the coals at that destination. And so that we may have a common basis to start on, let us take the last year, 1942, as a base, so I cannot answer your question.

Q. Is that just an oversight, that you did not report it?

A. Well, I don't know.

Q. Didn't you know, Mr. Nelson, that there was not a pound of coal from Fulton County moved into that destination in 1942, or any other year?

A. No, I do not know that.

[fol. 519] Q. Didn't you think it was necessary to inquire into facts like that, when you were representing here that these rates constitute a 13th Section violation; or did you assume that coal is coal; and coal is coal means there must be some competition at all points?

A. We have not shown the movement to each and every point in this territory. We selected these representative points to show a representative movement.

Q. Was it just happenstance that you showed the representative point, a movement of coal from Fulton County to Rockford; or was that for the purpose of making the test representative so far as Fulton County was concerned, in this 13th Section proceeding?

A. It was not for the latter purpose.

Q. All right; let us go down one by one, then; what is the movement of Fulton County coal to your next point, Belvidere?

A. The only report that we have of movements are those shown in Exhibit No. 4.

Q. In other words, then, outside of Rockford here, you don't know whether or not there is a movement, or whether or not there is discrimination in so far as Fulton County coal is concerned, for example, at the points in the affected territory; is that right?

A. I cannot tell you how much coal had moved in there.

Q. Then, what is the revenue discrimination so far as [fol. 520] Fulton County coals are concerned, involved in this proceeding?

A. That does not necessarily mean there has not been any Fulton County coal shipped.

Q. I did not ask you that, Mr. Nelson; I asked you what was the revenue discrimination so far as Fulton County coal

is concerned in this proceeding, based on knowledge of movement to the points in the territory affected; tell me, what is that revenue discrimination?

A. Where the rates from Fulton County are on a depressed basis, and which moved tonnage, you have revenue discrimination.

Q. I want to know specifically what is the revenue discrimination so far as Fulton County coals are concerned, to the destinations in the affected territory here, from this witness; now, what is it?

A. You have movement of Fulton County coal into this territory; this exhibit of ours shows that.

Q. All I asked you, Mr. Nelson, is what is the revenue discrimination?

A. When you have lower rates on Fulton County coal than you have to interstate points, rates lower in level,——

Q. I am asking you specifically, what is the specific revenue discrimination so far as Fulton County coal is concerned, into this affected territory; now, what is it?

Mr. Stadell: When you say what is the revenue discrimination, I do not understand whether you mean describe its [fol. 521] nature, describe its amount, describe where it comes from,—or what do you mean? You have repeated the question three times, and it is too indefinite. I am just trying to help you, because Mr. Nelson was not giving you the right answer.

Mr. Vesey: Maybe I should bring you up to date, what I have done in the last ten minutes. The witness has said these destinations were representative destinations of this territory. I then asked him whether he knew there was a pound of Fulton County coal that moved to any destination other than Rockford; he said he didn't know. I now ask, on the basis of those statements, what is the revenue discrimination in this affected territory.

Mr. Zoll: I am still saying that question is somewhat vague.

Exam. Trezise: Do you understand what he means, what is the revenue discrimination in the affected territory?

By Mr. Vesey:

Q. I mean if you know; if you do not know, it is all right.

A. Well, discrimination is that the rates on which Fulton County coal is moved into this affected territory are not

bearing their share of the transportation burden; lower in level, and should be increased.

Q. Oh, so they are not bearing their share of the transportation burden?

A. That is my opinion.

[fol. 522] Q. What do you base that opinion on?

A. My Exhibit No. 11.

Q. Your Exhibit No. 11?

A. Yes, sir; which shows that the average level of the rates from the Fulton County district to the representative suspended points is 72.1 per cent of the H. & H. scale rate for the average distance involved, and that the average level of the rates from the same district to the representative comparative points, using the same formula, is 79.6 per cent on lump coal, and 77.9 per cent on fine coal, or higher than the level of the rates to representative suspended points.

Q. Now, is that the sole basis for that opinion that you just gave; that the intrastate rates were not bearing their fair share of the transportation burden?

A. It indicates that the intrastate rates are lower in level than the rates to the comparative points, and are on a depressed basis; and in my opinion, should be increased.

Q. I asked you, is that the sole basis for that opinion that you gave, that intrastate rates were not bearing their full share of the transportation burden; is that the basis for it, or do you have any other bases? I think, in fairness to the witness, if the Examiner please, he has sort of been under fire for an hour and a half here, we ought to take a little recess.

Exam. Trezise: Do you want that question pending?

[fol. 523] Mr. Vesey: I would like to have that answered; or if Mr. Nelson would like to have a recess first, that is perfectly all right with me.

The Witness: Well, take a recess now.

Exam. Trezise: All right; we will recess.

(A short recess was taken.)

Mr. Vesey: May we go off the record?

Exam. Trezise: Yes; off the record.

(Discussion outside the record.)

Exam. Trezise: All right, gentlemen, then let us continue. The answer to the last question is pending.

The Witness: Mr. Vesey, as I understand, your last question is, is the showing indicated by me in my Exhibit No. 11 the only reason that we have advanced for revenue discrimination; is that correct?

By Mr. Vesey:

Q. No, no; you told me that in your opinion the intrastate traffic revenues were not bearing their fair share of the transportation costs; and you then told me that that was based on your Exhibit 11; and I then asked you if that was the sole basis for that opinion which you gave.

A. Of course, the showing in Exhibit No. 11 is the recapitulation of the things that are in Robertson's Exhibits 3 and 4, and the reasons that the carriers have given are contained in these exhibits; and then their testimony all goes to make up the reason.

[fol. 524] Q. Now, my question again: Was that the basis for your opinion that intrastate rates do not bear their fair share of the transportation burden; now, is that Exhibit 11 the basis for that statement which you made?

A. Well, Exhibit 11 and other exhibits that have been placed in the record.

Q. What other exhibits?

A. Well, Robertson's Exhibits 3 and 4; all the exhibits that have been placed in the record up until now.

Q. The other exhibits do not show, do they, or give any indication of whether or not the rates and the revenues from intrastate business bear their fair share of the transportation burden, do they?

A. They give the level of the rates; Exhibit No. 11 is a recapitulation of the information that is contained in Robertson's Exhibits 3 and 4.

Q. In other words, your conclusion that the intrastate revenues are not bearing their fair share of the transportation burden is predicated solely upon the evidence to date in this case, which in your opinion indicates a lower level of rates in these destinations in the affected territory than exist in the compared territory; is that right?

A. It does indicate a lower level of rates; yes, sir.

Q. And that is the basis for that statement you gave?

A. Well, I have given other reasons. This Exhibit No. [fol. 525] 4 contains a statement that shows the revenue on the coal that moved under intrasfate rates compared with that that moved under the interstate rates. Now, the fact

that there might not be movement from one particular field to one individual representative point does not indicate that there is not movement to other points. These representative points were selected to show the situation in the district. They were representative; the movements of coal vary as a certain industry or dealer might obtain coal from Fulton County district this year and maybe next year he might buy it from some other district.

Q. You are not questioning the representative character of the destinations in the affected territory?

A. No, no.

Q. You have not changed your opinion as to the destinations in the affected territory?

A. No, sir.

Q. If what you said is true, and should it develop in this proceeding that there was no revenue discrimination whatsoever in so far as Fulton County coal to these destinations is concerned, would you still then say that an increase in the rates on Fulton County coal to these destinations would be proper, and a proper conclusion to arrive at in this proceeding?

A. You are assuming a great deal.

[fol. 526] Q. Well, assuming the assumption is proved to be correct, would you still insist on that under Section 13?

A. I do not think I should answer an assumption that way.

Q. You would not, you would rather not answer that question?

A. No, sir; I would rather not answer.

Q. Is that because you think that your answer would be an admission against your interest in this case?

A. No; I just do not like to answer questions based on assumptions.

Q. You have an opinion, I take it, but you just do not want to give it.

A. No, I have no opinion to withhold; I advanced opinions very freely, I think.

Q. Now let us for a moment just take a look at Exhibit 11. Exhibit 11 shows levels predicated upon average distances and average rates from several origin groups to the various destinations involved, does it not?

A. Yes, sir.

Exam. Trezise: Over the short tariff routes?

By Mr. Vesey:

Q. Over the short tariff routes?

A. Short tariff routes.

Q. And then didn't you testify yesterday, Mr. Nelson, particularly under cross-examination by Mr. Wilkinson, that as to certain of these origin groups there were varying rates to these destinations?

[fol. 527] A. What do you mean by varying rates?

Q. Different rates by different roads to these destinations, from the various origin groups.

A. Oh, yes; in some instances there are.

Q. Now, did you make a study to determine what road and on what rate the coal from the origin group moved to each destination?

A. This is not a weighted average, if that is your question.

Q. Don't you understand my question?

A. That is the way I understand from your question.

Mr. Vesey: Read the question.

(Question read.)

By Mr. Vesey:

Q. Did you make a study?

A. The coal that is shown in this exhibit, the tonnage that is shown in this exhibit——

Q. No, Mr. Nelson, did you make a study, for example, to determine over what road and on what rate the bulk of the coal moving to each of these destinations from a given origin group moved?

Exam. Trezise: Both representative and affected points?

Mr. Vesey: That is right; exactly.

By Mr. Vesey:

Q. Was such a study made, yes or no.

A. Well, the tonnage that is shown in this statement here, we know where it came from and we know it moved.

Q. You know what a study is, don't you?

A. Oh, surely.

[fol. 528] Q. Now, did you make one, or didn't you?

A. But we did not ascertain every ton of coal that moved over each of these rates for a given period of a year or two years, or ten years; no, sir; we did not.

Q. Then, so far as you know, coal moving from any one of these origin groups to any one of these destinations might have moved over the longest route, over the highest tariff; or it might have moved over the shortest possible route, over the lowest tariff from that particular origin; isn't that true?

A. That is possible; but it is reasonable to assume that it would move over the route that had the lowest rate, if it could.

Q. But you do not know which way it did move, because you made no study to find out.

A. I stated before that we did not find out the actual movement for a period of years under each rate.

Q. So, then, so far as you know, Mr. Nelson, based on your Exhibit No. 11, that exhibit does not show a true comparison of levels even from one origin group as against another origin group to any destination involved, taking into consideration actual movement of the coal.

Mr. Kaier: Object, on the ground that question is argumentative; conclusion to be drawn from the facts already established.

Exam. Trezise: Oh, ask him if it does. You may do that. [fol. 529] The Witness: It is not a weighted average; I assume that is what he is trying to get.

By Mr. Vesey:

Q. Just forget what I am trying to do; just answer my question.

A. Average level; that is what it is.

Q. And it shows nothing as to actualities of the situation.

A. It is not a weighted average.

Q. And that exhibit, taken in and of itself, submitted to any commission, does not show a true picture with respect to rate levels from any origin group to any destination, in so far as you know, Mr. Nelson?

A. Oh, I do not think you have to show a weighted average level to show a level.

Q. Mr. Nelson, I am not interested in what you think I have to show; I am asking you a simple question, based on what your own exhibit shows.

A. I have explained what the exhibit shows.

Q. Is that the only explanation?

Mr. Kaier: Do you think it is a true picture?

The Witness: I think it is a true picture; yes, sir.

By Mr. Vesey:

Q. You mean it is a true picture of a black and white page; I agree. But I am asking you as to the actualities in comparing levels; and I am asking if from that exhibit, or from having compared it with the Illinois group, is that the percentage figure which you give in here for the H. & H. scale?

[fol. 530] A. You have a distance; you have an average distance, you can ascertain the average—the rate under the scale and find out what your present rates are, of the H. & H. scale rate.

Q. And none of the coal moves over the average distance, does it?

A. Over the average distance?

Q. Yes.

A. Well, it is representative of the movement.

Q. Again, Mr. Nelson, none of the coal from the groups shown in your exhibit moves over the average distance.

Mr. Biaett: Of course they do not make up a car of coal from each of the mines in the group.

Mr. Vesey: Thank you; I thought I could get that.

Exam. Trezise: There is no distance like that.

Mr. Kaier: What the exhibit shows is terribly clear; we are getting nowhere with the questions.

Mr. Vesey: It is terrible; I don't know about the clear.

Exam. Trezise: Mr. Nelson, following your question, it is your thought, or is it your thought that that exhibit reflects the relative disparity between the level of the intrastate rates and the interstate rates?

The Witness: Yes, sir; it does.

By Exam. Trezise:

Q. As composed and constructed in the manner that you indicate?

A. That is right.

[fol. 531] By Mr. Vesey:

Q. And you are firmly of that opinion, Mr. Nelson?

A. Yes.

Q. How is that?

A. Yes.

Q. And that is the opinion that you now, as an expert witness, want to hold out to these two Commissions? Now, let us be certain of that.

Exam. Trezise: I think you have urgently said yes to that before; now you do not want to change that, do you?

The Witness: No, I do not want to.

Mr. Morgan: Did he say yes, or virtually yes?

Exam. Trezise: Let the witness answer whether he means yes or virtually yes, as to whether it shows the relative disparity between the state and the interstate rates, and reflects that disparity.

The Witness: The answer is yes.

By Mr. Vesey:

Q. Now let us take, for example, just coal moving from Brazil-Clinton district to Beloit, Wisconsin; didn't you testify yesterday that there was a difference over the Milwaukee Railroad, for example, as against the other roads going in there, of some 17 cents a ton?

A. You are speaking about proposed rates?

Q. What was that?

A. You are speaking about proposed rates?

[fol. 532] Q. No, no; I am speaking about the rate that has been published by the carrier, the Milwaukee Railroad, as against other carriers from Brazil-Clinton on the coal moving from the Brazil-Clinton group to Beloit, Wisconsin.

Mr. McElroy: Beloit, or Rockford?

Mr. Vesey: Beloit.

By Mr. Vesey:

Q. Do you have Rockford before you? Were you the one that suggested it? I don't care; the only point I am trying to establish is that from each origin group there are varying rates from the various mines to any given destination.

A. At the present time, as I read these exhibits, there is only one rate to Beloit.

Q. What was the 17-cent rate you were speaking about yesterday from Brazil-Clinton?

A. To Rockford.

Q. In other words, you have varying rates from Brazil-Clinton district over different roads to that destination, have you not?

A. We have a rate from Brazil-Clinton district to Rockford of $1.80 that applies via the Milwaukee Railroad. Then we have a rate 17 cents higher, $1.97, that applies from mines on the other railroads.

Q. Now, then, if you were to do as you have done in Exhibit 11, strike an average, and not know over which route coal moves to that destination from the Brazil-Clinton [fol. 533] group, you wouldn't know whether you were getting a true comparison with the intrastate rates.

A. Our comparison is for the proposed rates, and we used the mileage for those proposed rates, and we ascertained the average where there were two rates proposed that differed, we used both of them.

Q. Suppose all the coal moved over the lower rate.

A. As I told you before, this a mathematical showing, it is not a weighted average.

Q. Then, will you finally admit, Mr. Nelson, that your Exhibit 11 does not show the actual levels of the rates on which coal moves from the origin groups to the destinations?

A. It does not show a weighted average; it shows, in my opinion, the levels of the rates.

Q. Will you please answer my question.

A. I endeavored to; I am sorry that I have not answered it like you want me to.

Q. I just want you to answer my question, that is all. Will you read the question.

(Question read.)

A. I think it shows the levels of the rates.

Mr. Vesey: If the Examiner please, I am going to ask the witness, I am going to ask the Examiner to direct the witness, to answer that question. It is a simple question that any man sitting in that chair can answer; and certainly, on [fol. 534] the basis of his testimony today, I am entitled to a direct answer to that question.

Exam. Trezise: He said he thought it did show the level of the rates. Now you asked him whether it is average

rate, or distance; I don't know which, over which the coal actually moves.

Mr. Vesey: Exactly.

Exam. Trezise: That is what you want.

Mr. McElroy: Well, isn't the answer Mr. Nelson made to your question obvious to everybody, that it is not the actual average rate moving the coal.

Mr. Vesey: That is right; and I would like to question Mr. Nelson at a later date; that is why I would like to have a specific answer.

Mr. Kaier: Mr. Examiner, I submit that is not the purpose of taking this testimony; the purpose of this hearing is to establish the facts. Now, the facts have been established; but counsel wants the witness to draw conclusions from the facts, and to tell again what the exhibit shows and what it does not show. I submit that the whole examination is argumentative, and that it is improper cross examination.

Mr. Vesey: I take exception to that; that for the obvious reason, from the testimony today, the exhibit No. 11 does not show that which it purports to show.

Exam. Trezise: Well, there is no use arguing about [fol. 535] that. The question you asked is all right; and whatever answer he wants to make to it, is up to him.

The Witness: Well, Mr. Examiner, I have endeavored to answer it two or three times; I will try once more: I think that Exhibit No. 11 shows the average level of the rates into this territory; I mean the average level of the proposed rates to the suspended points, representative suspended points, and the average level of the present rates to the representative comparative points.

By Exam. Trezise:

Q. And it does not show the weighted average rate?

A. It does not show the weighted average rate. That is what I have been trying to tell him.

By Mr. Vesey:

Q. Nor does it show the comparison of the actual rates on which coal actually moved from the origin groups to destinations involved, does it?

Exam. Trezise: You distinguished that from the average weighted rate?

Mr. Vesey: Exactly right.

Exam. Trezise: I don't understand that.

Mr. Vesey: We have three things: a weighted average, and then a comparison of rates on which the coal actually moves from these origin groups to these destinations. When we talk about a theoretical in respect to the average, we talk about a theoretical, when we talk about the weighted [fol. 536] average, and then actualities——

Exam. Trezise: Let us go off the record right here.

(Discussion outside the record.)

Exam. Trezise: Go ahead.

By Mr. Vesey:

Q. Now, then, Mr. Nelson, to make a true comparison to determine the relationships of rate levels at a given destination, shouldn't the weighted average be used?

A. Well, the weighted average would show what actually happened.

Q. That is the thing we are concerned with, isn't it true?

A. But I think this is representative of the levels of the rates. When you use an average distance of a certain group you may have coal moving from the various mines in that group, and it may not move just exactly the same distance as your average distance, but still your average distance is representative of the distance from that group to these destinations. And the purpose of showing a comparison of the level of the rates, I think this exhibit is proper.

Q. Let us take, for example, the destination Amboy, that we first talked about; and speaking now of the intrastate Fulton County coal, tell me, will you please, where is the preference or prejudice that exists between the intrastate coals moving to Amboy from Fulton County?

A. The——

Q. —and the interstate coal that you had reference to [fol. 537] when you brought this proceeding?

A. Well, I am taking your word for it that there isn't any Fulton County movement into Amboy. That does not mean that there won't be a Fulton County movement, or that there has not been in the past a Fulton County movement. Because, as I stated a while ago, the movements change from one field to another for various reasons. A

consumer or dealer does not always buy his coal from one district; he changes it, and buys of other districts.

Q. What is the preference or prejudice that is involved at Amboy?

A. If there was no movement of Fulton County coal into Amboy, then in so far as Amboy is concerned, there would be no preference or prejudice, as I see it, to Amboy from Fulton County.

By Exam. Trezise:

Q. Well, couldn't the rate be so high that there couldn't be any movement, and still be a prejudice as to that locality? You are getting into questions here that I do not believe a rate witness ought to answer. When you get them on the record, I am not so sure that they are going to be very valuable. I don't know whether this witness knows.

Mr. Vesey: I assumed he did, because he said that he was one of the two—one of the committee representing the carriers that made this determination. Now, he certainly made it on something, and he had some basis.

[fol. 538] Exam. Trezise: You can proceed, but it does not make any difference what this witness says about what the application of the law is. But go right ahead.

Mr. Vesey: I am not seeking——

Exam. Trezise: He told you there would be no preference if there wasn't any movement. You know there could be, if there was no movement.

Mr. Vesey: I know that.

By Mr. Vesey:

Q. Was there a preference at Amboy, or a prejudice, in so far as any intrastate coals are concerned; and if so, what is that preference or prejudice?

A. I have no record of a movement of coal into Amboy. I have not testified about a movement of coal into Amboy. I have shown that the rates to Amboy from the Illinois destinations are on a low level, compared with rates to representative destinations. Amboy is representative of this destination territory.

Q. You say Amboy is?

A. It is one of the representative points.

Exam. Trezise: If that is a good stopping place, at 2 o'clock we will reconvene.

(at 12.30 o'clock P. M., recess taken to 2 o'clock P. M.)

Afternoon Session

The hearing was resumed pursuant to recess.

2 o'clock P. M.

[fol. 539] Exam. Trezise: Let us proceed, gentlemen.

C. J. Nelson resumed:

Cross-examination (Cont'd):

Mr. Morgan: If the Examiner please, with the courtesy of counsel who is conducting the cross-examination, I would like to ask just one question at this point, so as to make it possible to follow more intelligently some of the exhibits of this witness, particularly Exhibit 11, which is on examination and to which particular reference is being made.

Exam. Trezise: Mr. Vesey, do you yield to Mr. Morgan?

Mr. Vesey: I do.

By Mr. Morgan:

Q. Mr. Nelson, will you point out in the prior exhibits the exact page of the prior exhibits from which you obtained the data on which you computed the figures appearing in lines 14 and 15 of your Exhibit 11.

Mr. Biaett: That would take practically all afternoon, if the Examiner please.

Mr. Morgan: You mean he hasn't any notes or anything with him, to which he can refer?

Mr. Biaett: No, sir, he will have to go through all of these points and all of these 19 groups.

Mr. Morgan: I am only referring to two groups, 14 and 15; and it should not—I am assuming this witness prepared this exhibit, and he should be in position, I assume——

[fol. 540] Mr. Biaett: Mr. Morgan, I did not say that he could not do it; I just said it would take an awfully long time for him to do it at this time.

By Mr. Morgan:

Q. How long would it take you to do that, Mr. Nelson?

A. Well, it would take some time; it took a long time to compile this exhibit.

Q. I assume it may have taken a long time to compile the exhibit; but having reference to Robertson's Exhibits to which you adverted this morning, could you identify the divisions and pages in the prior exhibits on which you base that exhibit; having reference, as I say, only to lines 14 and 15 of your Exhibit 11.

Mr. Kaier: The sections of Exhibits 3 and 4 from which it was taken are identified at the top of Exhibit 11. I assume you want more than that, Mr. Morgan; is that right?

Mr. Morgan: I want the identification of the source; first, line 14, and then line 15, so that anyone can check it back, even though he not be a railroad man.

The Witness: On page 2 of Section 5 of Exhibit No. 3, we show seven origins, total 1695.9 miles from Brazil-Clinton to Amboy, Illinois. That is on line 14 of page 2, Section 5, Robertson's Exhibit 3.

On line 27, page 4, the same section, the same exhibit, we show 30 origins, 7,955.7 miles from the same origin dis- [fol. 541] trict, that is, Brazil-Clinton to Belvidere, Illinois. The proposed rate in the first instance to Amboy was $1.84——

By Mr. Morgan:

Q. If you will just mention the lines and save the record, shorten it.

A. Well, you have to go to Exhibit No. 4 to get the proposed rate; the mileage is taken from Exhibit No. 3.

By Exam. Trezise:

Q. Mr. Nelson, you got all of your information, didn't you, out of these exhibits?

A. Yes, sir.

Q. To make up your Exhibit No. 11?

A. Yes, sir; this is a recapitulation of the information contained in these two exhibits.

Exam. Trezise: The Examiner does not understand quite the point you want to make. Do you want to make some point about this, Mr. Morgan?

Mr. Morgan: This hearing, if the Examiner please, will probably terminate tomorrow; and Exhibit 11 is a recapitulation. I desire the source of the data, by description, mentioned on which Exhibit No. 11 is based, so that it can be checked.

Exam. Trezise: Well, you can take this Section 5 of Exhibit 3, and find the destination at the top of the page. And then you have your group number, and you get the answer to the distance.

[fol. 542] Mr. Morgan: I want to know what the witness took.

The Witness: I told you for those two points. Now I can go ahead——

Mr. Morgan: You have mentioned just certain items.

Exam. Trezise: He has got the distance now; do you want to know how he got the rates?

Mr. Morgan: Just reference, if he has anywhere a check as to distances, source; then he can shift to the other exhibits, as to where he obtained his rates.

The Witness: Well, the rate to Amboy is shown on page 2, line 14, section 4, of Robertson's Exhibit No. 4; proposed rate, $1.84.

Now, the proposed rate to Belvidere is shown on the following page, page 3, the same section, the same exhibit, line No. 13, $2.12. And so on, all the way through. We took the average, we took the total distance, the total origin points from each district to each destination, coupled with the proposed rate, put them all down here and added them together, divided the grand total addition by the total number of origin points; and that gave us the average distance.

And we ascertained the average rate, we applied the H. & H. scale to the average distance, and then ascertained what per cent the average rate was of the scale, which is simply a matter of mathematics.

[fol. 543] Q. The latter page is mathematics?

A. Well, it is all mathematics; all the information is in these two exhibits. And the reason we put it up in this form was so that you can see the whole picture. It is somewhat difficult to take one of these exhibits and compare the level of the proposed rate to a comparative suspended destination, and then leaf over four or five pages and compare the level of that rate with the present rate to the compara-

tive destination. So, in order to show the whole picture, we worked up Exhibit No. 11.

Q. Now, the data, then, was obtained in the same manner from Exhibits 3 and 4 with respect to all items appearing in the various columns under lines 14 and 15 of Exhibit 11, excepting the mathematical computations as to the averages; they were computed in the manner you stated.

A. Well, the exhibit shows how they were computed. You say lines 14 and 15, Exhibit 11—oh, I see what you mean, lines 14 and 15 of Exhibit 11; that is right; they are all computed in that manner.

Q. And all the data appearing in Exhibit 11 was obtained from Exhibits 3 and 4?

A. That is right.

Q. Except to the extent it might have required a mathematical computation?

A. Well, after we got the data down, then it was a ques-
[fol. 544] tion of dividing, which is mathematics.

Q. Did you compute those mathematical computations yourself, personally?

A. No, sir; it was done under my supervision.

Q. By Burlington Railroad employees?

A. Yes, sir.

Mr. Morgan: That is all.

By Exam. Trezise:

Q. Well, now right along that line, taking for example Section 4 of Exhibit 4 and turning over to page 3, where you have below it the present rate.

A. That is right.

Q. There is a proposed rate too, to that point, isn't there?

A. Yes; we did not take the proposed rates to Beloit into consideration in compiling this exhibit, because Beloit was shown as a representative comparative destination in our exhibits.

Q. Is that true with respect to all other origin groups in—no, not all other; the Brazil-Clinton, Linton-Sullivan, and Princeton-Ayrshire groups, in making the calculations here to Beloit you used the present rate, and did not use the proposed rate, or an average of the proposed rate; that is true, is it?

A. That is right. The names of the points to which we showed an average of the proposed rates are indicated at the top of columns 1 to 7, inclusive; and Beloit is not listed there. And you will find Beloit listed at the top of columns [fol. 545] 8 to 14, inclusive, as a representative comparative point.

Q. The only point I was making was that Beloit, while it is a representative comparative point now, if these increases are allowed it would fall outside of your Exhibit 11 in reflecting the results that are indicated by that exhibit; that is true, isn't it? Of course, because it is a different rate.

A. Surely.

Exam. Trezise: Thank you. I thought maybe Mr. Morgan might want to know that, inasmuch as he is asking how you calculated these particular figures.

By Mr. Morgan:

Q. As I understand also, all the comparative points were excluded in Exhibit 11, from calculations.

A. Comparative points?

Q. Yes.

A. No, sir.

Q. Beloit was the only one that was excluded? And by comparative points, having reference, I believe Exhibit 2 states those comparative points.

A. If you will look at the top of Exhibit No. 11 to the other columns, 1 to 7, inclusive, you will find the names of the representative suspended points.

Q. Those are all in Illinois?

A. Yes, sir. Then, if you will look at the top of the page, over columns 8 to 14 inclusive, you will find the names of the representative comparative points, and Beloit is one of them.

[fol. 546] Mr. Morgan: That is all.

By Exam. Trezise:

Q. Just what you said is true; but when you come to the rates from the three groups, the first three groups in Indiana to Rockford, of course there you show two rates, the present rate and the suspended rate.

A. That is right.

Q. But you did not do that to Beloit?

A. That is correct; we showed the present rate.

By Mr. Cardy:

Q. Mr. Nelson, do I understand that in the I. & S. proceedings you are attempting to increase the Beloit rates?

A. That is right.

Q. And what is the measure of that 15 cents, or does it vary?

A. Beloit is 15 cents higher than the proposed rate to Rockford.

Q. I just wondered whether or not you were asking a change in the Beloit rates in this proceeding. Is that only from Indiana?

A. No, there is no change in the rates from Illinois.

Mr. Cardy: That answers the question.

Exam. Trezise: May I ask this question, then: I am not sure about your Exhibit 11, in calculating the average rate, if you have done that; and I think maybe you have. You used to Rockford the present and the proposed as a composite figure; but going to Beloit, you have used only the present rate in calculating what the average rate [fol. 547] might be, in your Exhibit 11. Am I wrong about that?

The Witness: Mr. Examiner, to Rockford we used only the proposed rate,—to Rockford; not the present rate.

By Exam. Trezise:

Q. I see. Then, in calculating your average to Rockford, to justify that sort of rate, you used the proposed rate.

A. That is right.

Q. But then when you come to Beloit, as you say, you used the present rate, rather than the proposed rate in determining what the average would be?

A. That is right, because we classified Beloit as a competative point.

Exam. Trezise: Is that all, Mr. Morgan?.

Mr. Morgan: There is one question that is not answered: Did he follow the same procedure with respect to the other southern Illinois points; that is, using the present rate rather than the proposed rate?

Mr. Kaier: No, we did not use the present rate to any southern Illinois.

Mr. Morgan: He just stated he did, as to Beloit.

Mr. Kaier: That is not in Illinois.

Mr. Morgan: Pardon me; I should have said Wisconsin.

By Mr. Morgan:

Q. In the comparative cities in southern Wisconsin, did you follow the same procedure as you did in the case of [fol. 548] Beloit, as you previously stated that you merely used the present rate?

A. That is correct.

By Exam. Trezise:

Q. But that is not to be interpreted to mean that there is a change from the other groups to Beloit at all; the rate is the same. Of course, you used the only rate that was there, is that right?

A. We are proposing some changes in the rates to Beloit; but in making this computation we did not measure the proposed rates to Beloit.

Q. Are you changing any rate from any place at all to any other point in Wisconsin, than Beloit, in this particular proceeding?

A. Not to Wisconsin.

Q. Not at all; you are not changing any rate; so you took the rate that was in effect; it is the present rate, the future rate until it is changed. I wanted to get that straight, because that is misleading, if you used the same principle. Of course, you used the same principle, because there is only one rate to use to any other point in southern Wisconsin; isn't that true?

A. That is correct.

Mr. Morgan: That is all.

Exam. Trezise: Do you have some more questions, Mr. Vesey, at this time?

Mr. Vesey: Yes.

[fol. 549] Exam. Trezise: Mr. Vesey.

By Mr. Vesey:

Q. Mr. Nelson, as I understood your testimony just before the noon recess, you stated that you had not made

any specific study, nor had the carriers' committee made any specific study to determine whether or not any particular individual or industry in the compared territory was directly competitive with an industry or individual at the point of Amboy, for the purposes of determining whether or not by virtue of the difference in the rates intrastate as against interstate, resulted in a preference to the competing unit at Amboy as against the competing unit in the compared territory; is that correct?

A. I did not make a personal investigation; but as I stated this morning, there will be some additional testimony on that phase of the case.

Q. And your committee representing the carriers did not make any specific study to that end.

A. I cannot answer that question; you will have to let the witness tell.

Q. Then, you don't know whether they did or not; is that it?

A. I know they made investigation, but I cannot tell you definitely regarding Amboy.

Q. Do you know any individual consumer of coal, or any company or corporation consuming coal in any of the destinations in the compared territory competing directly [fol. 559] with a concern located at Amboy in so far as Fulton County coals are concerned, in which difference in the rates results in an actual preference, not a theoretical, an actual preference of the concern at Amboy; of your own knowledge, now.

A. As I stated, I did not make any personal investigation regarding the movement to Amboy. You told me this morning there was no movement from Fulton County. Now, that fact may or may not indicate preference or prejudice between the districts in Illinois; but I think that the difference in rate level of the rates at Amboy——

Q. I am not interested in a nice theory of the level of the rates; I am just talking now—and I want your answers confined to my question—as to whether or not you did make that study, and what it shows.

A. I would like to finish my answer.

Q. I don't care for your answer now as to that; we have covered that time and again. I want a specific answer to my question.

Exam. Trezise: Let us have the question.

(Question read.)

A. I answered that.

By Mr. Vesey:

Q. The answer is no?

The Witness: Will you read the answer.

(Answer read.)

By Exam. Trezise:

Q. Well, Mr. Nelson, with all the implications, amplifications and ramifications in the question that was asked, is [fol. 551] your question yes or no?

A. The answer to his question, did I make a personal investigation, is no.

Q. And you can embrace all these other things in there; you don't know about the intensity of that competition to these—between these shippers; you could not have first hand knowledge of it anyway; that is true, isn't it?

A. I made no investigation at Amboy.

Exam. Trezise: Go ahead.

By Mr. Vesey:

Q. And in so far as the receivers of coal are concerned, you made no investigation; that is correct, isn't it?

A. At Amboy?

Q. As against the other compared points.

A. That is correct.

Q. And if I were to ask you the same question, destination by destination, taking the 12 representative destinations in the affected territory as against the ones in the compared territory, your answer would be the same, wouldn't it?

A. I made no personal investigation; I told you so.

Q. And then, so far as you know, taking all the receivers, you made no investigation and you do not have any facts now, do you, to rely on, to show that a preference actually exists between receivers of coal in the affected territory, point by point, and the receivers in compared territory?

[fol. 552] A. I think that the rate levels indicate that it actually exists. To illustrate, if there was an industry planning to locate in this area in northern Illinois or southern Wisconsin, the sites in northern Illinois would no doubt be preferred, because they have a lower level of rates.

Q. And that is the sole basis for your answer?

A. That is right.

Mr. Vesey: Thank you; that is all.

Exam. Trezise: May I just ask a question along the line that Mr. Vesey was questioning before, to have it altogether, if you will pardon me, please:

By Exam. Trezise:

Q. About this rate from the Fulton-Peoria group to Dixon, do you recall how that is maintained; was it established voluntarily by the carriers, or by some commission? Do you know that?

Mr. Cardy: I can state it was not by an order of the Illinois Commerce Commission.

By Exam. Trezise:

Q. That was not established by the Illinois Commerce Commission, was it?

A. No, sir; it was not. The complaint involved the rates to Dixon, that did not include rates from Fulton County.

Q. That is right; now, is the rate from the Fulton-Peoria group to Moline the same as the rate from the same origin to Davenport.

A. Yes, sir.

[fol. 553] Q. Do you recall that the rate from the Fulton-Peoria group to Moline was increased from $1.00 in the old 13th Section case No. 23130 to a so-called minimum rate of $1.23 at that time, I believe; do you recall that?

A. No, the Moline rate was made $1.15.

Q. All right; we will even take $1.15, if you like. Then the rate to Moline was fixed as a minimum rate, not a maximum rate; the Interstate Commerce Commission cannot fix maximum rates.

A. It was fixed as a minimum rate to Moline.

Q. It was fixed as a minimum rate to Moline, was it not?

A. That is right.

Q. And that rate was made applicable to Davenport; do you recall the reasons for that?

A. A later decision in the same case, they reduced the rate to Davenport to the same level as the rate to Moline, $1.15, and made it a maximum rate, because of the competition that existed between Davenport and the east side cities, Rock Island and Moline. They stated that this Tri-City area was one large industrial area.

Q. And was it true that various industries using coal, as well as coal merchants at Davenport, are in competition with industries of like nature at Moline?

A. That is correct.

Q. So the Commission fixed a minimum rate to Moline; [fol. 554] it was extended to Davenport, did you say as a maximum rate? Where did you get that?

A. They made the Davenport rate the same as the Moline rate.

Q. I thought you said they made it because they were all in the same area, and it was because of the competitive situation; and if you try to remove a competitive situation you try to avoid undue prejudice.

A. Well, it would be a maximum rate; it would also be a minimum rate.

Mr. Vesey: May we go off the record?

Exam. Trezise: Off the record.

(Discussion outside the record.)

By Exam. Trezise:

Q. Mr. Nelson, had they put in $1.14, then, to Moline, that would not have been in conformity with the law, would it; I mean that was not in conformity with what you had to do under the order; you had to put in $1.15, you could not put in $1.14, could you; that is, and obey the order; so you had to raise it up to $1.15; or, rather, what you really did do is to take it from $1.23 and put it down to $1.15.

A. That is what we did.

Mr. Morgan. Is that like the Davenport rate?

The Witness: Yes, sir.

By Exam. Trezise:

Q. Then that $1.15 became the Davenport rate?

A. That is right.

[fol. 555] Exam. Trezise: I think there is a lot of argument about that; but I think the Commission will not be misled.

Mr. Vesey: If the Examiner please, I ask the Examiner to take judicial notice of that portion of the decision of the Interstate Commerce Commission shown on page 305 of 197 ICC, reading as follows: "We find in No. 21020 that the rates on bituminous coal in carloads from the northern Illinois, Fulton County, and Bureau County districts including Wilmington but not including Alpha or Fenton," and so forth, "and Buffalo, Iowa, are and for the future will be unreasonable and unduly prejudicial to the extent that they exceed or may exceed $1.15 per net ton."

Now, if the Examiner please, in view of that, I would like to ask the witness just one question.

Exam. Trezise: Go ahead.

By Mr. Vesey:

Q. In so far as the rates are concerned, Mr. Nelson, do you subscribe to the principle that the rates of coal from any given origin group into short haul territory should be the same to points equi-distant from the origin group, unless there are strong reasons of record to compel a difference?

A. The fact that they may be the same distance between point of origin and destination does not necessarily mean that the same rate should be established.

Mr. Vesey: Read the question back to the witness.

(Question read.)

[fol. 556] Mr. Biaett: Will you read the witness' answer, please.

(Answer read.)

The Witness: I think, Mr. Vesey, that you have to take all the conditions and facts that pertain to each case into consideration, in reaching a conclusion as to what rate should be established. And there is no uniform rule that you could follow in establishing rates in short haul territory.

Mr. Vesey: I ask that the question be read again, and ask that an answer be given.

Mr. Kaier: I submit, the question has been answered, Mr. Examiner.

Exam. Trezise: We will have to have it read again.

(Question read.)

The Witness: Well, I think my answer is——

Exam. Trezise: The answer is that they should be, with the qualifications that he put on his question.

The Witness: Yes, sir. I said it a little differently, but that is what it means.

By Exam. Trezise:

Q. But you want to be assured that the situation has all those qualifications.

A. That is right.

By Mr. Vesey:

Q. Then, just let me ask you these questions, Mr. Nelson: In so far as the Fulton County coals are concerned, the terminal charges at point of origin are the same, are they not?

[fol. 557] A. You mean on two movements of that kind?

Q. Yes.

A. That is right.

Q. And the terminal charges at destination are the same?

A. Well, that may or may not be true.

Q. Take any destination in the affected territory, that you know of; is there a difference in the terminal charges at point of destination?

A. Oh, yes; certainly there is.

Q. Which ones do you have in mind?

A. Well, the terminal charges, they include the switching absorptions of other roads, the cost of making delivery to other lines, or making delivery to the industry if it is on your own railroad; and they vary at different points.

Q. Is there any substantial difference in the terminal charges at the destination points, using the 12 representative points in the affected territory?

A. Yes, there are subsfantial differences.

Q. When you say substantial, what are you thinking of in terms of cents per ton?

A. Well, I could not tell you in terms of cents per ton; but there are differences, different conditions exist at the different points, difference in cost of handling shipments. At this point an industry may be located on the end of a long spur. It costs more to deliver a car of coal to that [fol. 558] industry than if it was located along the main line.

Q. Well, you do not make any different rate to your short haul territory because of such a difference as that, taking your own road, for example.

A. All those things are taken into consideration.

Q. At a given destination, do you mean that you have variations in the rates because of variations in the length of the spur at a given place?

A. Oh, I mentioned that just as an illustration that there could be different conditions.

Q. In so far as the affected territory is concerned, is there any substantial difference, one destination as against another, in the terminal charges?

A. Yes, there is a substantial difference. Terminal charges at Rockford may not be the same as the terminal charges at Freeport, Sterling, or Dixon.

Q. Will you prepare and submit, when this hearing reconvenes on the 26th day of May, a list showing the variations in the terminal charges at the site of destination which you used as representative in this proceeding for the affected territory, and also for the representative destinations in the compared territory?

Mr. Biaett: Mr. Examiner, that will include not only switching charges and switching absorptions, but also some study of costs; and it is not our purpose in preparing our [fol. 559] case to submit any such data.

Mr. Morgan: You mean you do not propose to submit any cost data?

Mr. Biaett: None whatsoever.

Mr. Vesey: I am asking the witness.

Exam. Trezise: Counsel can answer that particular question, in producing the record.

Mr. Biaett: No, sir; we will not.

Mr. Vesey: That is all. I think Mr. Nelson told me before lunch that he would give me the switching rate at Linwood, switching absorption by the railroad. Did you check that in the noon hour?

The Witness: I did not have an opportunity to do it. Do you want it furnished later?

Mr. Vesey: Oh, definitely.

The Witness: All right, I thought maybe you wanted it now.

Exam. Trezise: Mr. Bather, I think you may begin; unless you will let the Examiner ask the witness a question.

By Exam. Trezise:

Q. How many other points can you name, on interstate commerce, that may have a lower basis of rates from the Fulton-Peoria group than the intrastate rates from the Fulton-Peoria group; how many other points than,—I think you named Davenport.

Mr. Vesey: Janesville too, Mr. Examiner.

[fol. 560] By Exam. Trezise:

Q. How many other points? Of course, I meant lower rates for distance considered on interstate commerce.

Mr. Cardy: Mr. Examiner, I believe there will be an exhibit on that point. Mr. Nelson might add to any that we have found.

Exam. Trezise: You have an exhibit? Well, then let us pass that question, unless Mr. Nelson has it immediately at hand here. The question is, there are some other points, Mr. Nelson.

The Witness: The rates to Clinton, Iowa, are very low.

Mr. Vesey: May we go off the record?

Exam Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Mr. Bather, we will listen to you now.

By Mr. Bather:

Q. Mr. Nelson, in your direct testimony you gave as your opinion that the rates to the affected territory, of which I will use Rockford as typical, were on a depressed basis: is that correct?

A. Yes, sir.

Q. Going back to 1910, and up to the present time, what increases in cents per ton have been made in the rates, for example, from southern Illinois to Rockford?

A. That is shown in the rate exhibit, Mr. Bather.

Q. I know; but I am going to follow that up. The rate [fol. 561] originally was, as I recall, about $1.15 in 1910; I think it is shown in the rate history.

Mr. Kaier: I think you will find it on page 8, Mr. Nelson, of Exhibit 4, Section 1.

The Witness: From southern Illinois?

By Mr. Bather:

Q. Yes.

A. January 1, 1910, the rate was $1.152.

Q. And your rate today, including the ex parte 148 increases, is $2.15.

A. Yes, sir.

Q. And under the proposed rates you would make that rate $2.30?

A. That is correct.

Q. Or practically 100 per cent increase in the rates since 1910?

A. Yes, sir; during that period, though, Mr. Bather, there has been a great change in conditions; cost of labor, and all that.

Q. I will get to that; I do not believe you want to testify, do you, as to transportation conditions?

A. No, sir; I do not.

Q. Well, you made the statement there has been a change in conditions; and I do not believe you want that in the record, so far as your testimony is concerned. Because I do not intend to cross examine you on that point. Now, you stated that the rates from Illinois and Indiana and west Kentucky to Chicago are depressed rates.

[fol. 562] A. Yes, sir.

Q. And that those rates were below what you consider a reasonable rate for the service rendered?

A. They are below what I consider a proper rate. They are reasonable minimum rates, I would say.

Q. They are compensatory, then?

A. Well, that is my opinion, that they are compensatory.

Q. In other words, you do not have any out-of-pocket costs in the handling of coal from the Illinois mines to Chicago.

A. Out of pocket costs?

Mr. Kaier: We are not making any such contention here; we will admit, Mr. Bather.

Mr. Bather: All right; that is the answer.

By Mr. Bather:

Q. Now, what is the distance via the Burlington Road from, say, Herrin, Illinois, which is practically the center of the southern Illinois district, to Chicago?

A. It is a little over 400 miles.

Q. And what is the distance from Herrin, Illinois, to Rockford?

A. Well, Mr. Bather, I cannot give you the exact distance from Herrin, Illinois, to Chicago from these exhibits; I can give you——

By Mr. Bather:

Q. What I want to get at is the distance to Rockford from the southern Illinois group, via the Burlington Road less than it is to Chicago?

[fol. 563] Exam. Trezise: Let him tell you what the distance is. He said the other day that the distance from southern Illinois via the short tariff routes to Rockford was 369 miles. Didn't you say that?

The Witness: The distance via the short tariff route of the Burlington to Rockford, C. B. & Q.—Sterling—C. & N. W.——

By Mr. Bather:

Q. No, I asked you what the distance is.

A. That is our short tariff route.

Q. I am not speaking of that; I am asking you what the distance is via Burlington rails from Herrin, Illinois, to Chicago, as against the distance from Herrin, Illinois, to Rockford.

A. I haven't that here; I cannot get it from this exhibit.

Q. Can you get that?

A. Surely, I can.

Mr. Kaier: Mr. Bather can get that.

Mr. Bather: I have it, if you want it.

Mr. Kaier: We don't want it.

Mr. Bather: I thought maybe the witness knew.

Exam. Trezise: They don't want to furnish it; go on.
Mr. Kaier: It is in the tariff.

By Mr. Bather:

Q. Would you accept the statement that the distance from Herrin, Illinois, to Rockford via the Chicago, Burlington & Quincy is 409 miles?

A. I think that is approximately correct.

[fol. 564] Q. And your distance from Herrin, Illinois, to Chicago is 423 miles.

A. The average distance from Burlington origins in southern Illinois to Chicago via the direct route of the Burlington is 415.2 miles. Just what the distance is from Herrin, I cannot tell you.

Q. That answers my question. What is your terminal absorption on coal delivered at Chicago?

A. To an industry on the Burlington?

Q. Well, take an industry on connecting lines, what absorption do you have to make in making delivery of coal to your connections in the Chicago terminal? I know it varies, but can you give me an idea what the average would be?

A. Well, if it went to an industry on the road that we have a direct connection with, the absorption would be a little over 31 cents a ton.

Q. It would be, then, approximately $16 a car, wouldn't it?

A. On a 50-ton car.

Q. What is your terminal absorption on coal delivered to industries on your connections at Rockford?

A. It is much less than that; I don't know what it is.

Q. Would you accept the statement that it is $3.15?

A. That sounds a little low, Mr. Bather.

Q. Well, the original absorption was $2.97, plus 6 per cent, which makes it $3.15 if delivered to industries on your [fol. 565] connections at Rockford.

A. Well, that may be correct; I would have to look at the tariff to verify it. There might be some variation in switching charges too; they are not all $2.90, or $3.15.

Q. They are all the same; you absorb the same amount, or you charge the same amount of reciprocal switching at Rockford as the other lines do?

A. Yes; but there might be a variation between roads, Mr. Bather.

Q. Well, I don't know of any——

A. It is not unusual to have a different switching charge to one industry versus another.

Mr. McElroy: That is what the Supreme Court says.

The Witness: If your conditions justify a higher charge.

By Mr. Bather:

Q. Do you know of any?

A. No, I don't know of any; I don't know what the charges are.

Exam. Trezise: Now, as we make records, if we are going to use facts as Mr. Bather has stated them, will you put your statement in the record some other way. Off the record, please.

(Discussion outside the record.)

The Witness: Mr. Bather, I think a better yardstick to use in measuring the rates to Chicago and to Rockford from southern Illinois would be the average short distance, in- [fol. 566] stead of selecting the Burlington Railroad, which is the long line from southern Illinois, and comparing it with the Burlington Railroad to Rockford. We are not the short line to Rockford; but our route is not quite as circuitous, as far as Rockford is concerned, as it is to Chicago. So I think the proper comparison would be to use the average short tariff distance, which is shown in this Exhibit No. 4.

By Mr. Bather:

Q. I am inclined to agree with you on that No. 4.

A. Now, we, in order to stay in business at Chicago, have to meet the rates of the other railroads.

Q. If I agree with you on that theory; but if you are handling coal to Chicago at a loss, do you believe that that loss should be compensated by charging Rockford, or any other locality, a higher rate?

A. Well, the southern Illinois rate to Chicago, of $2.05 for an average distance of 334 miles, is 63.1 per cent of the H. & H. scale. The southern Illinois rate to Rockford, the proposed rate to Rockford of $2.25 is 65.6 per cent of the Holmes & Hallowell scale.

By Exam. Trezise:

Q. That is without the Ex Parte 148 advance?

A. That is right. So the proposed rate to Rockford is very little higher in level than the present rate to Chicago.

By Mr. Bather:

Q. But it would be higher.

[fol. 567] A. What I gave you, 65.6 per cent.

Q. And I assume that you adhere to your position that the rates from Illinois mines, Indiana mines, and west Kentucky mines, to Chicago are not the fair measure of the rates to Rockford, Illinois?

A. They are depressed rates, and I do not think that level should be reflected in the rates to Rockford. As I understand, as I explained in my direct testimony, the same competition that exists at Chicago does not prevail to a great extent at Rockford. I have in mind the large volume of eastern coal.

Q. Well, now, to what extent is eastern coal used for industrial steam purposes, as compared with the coal used by the industries originating in Illinois, Indiana and west Kentucky?

A. At Rockford?

Q. No, at Chicago.

A. Well, the total volume of coal coming into Chicago amounts to about 27 million, 28 million tons a year.

Q. Where does the bulk of that coal come from?

A. From the East; from the eastern districts, eastern movement.

Q. Did you state that correctly, 27 million tons from the eastern district to Chicago?

A. No, that is the total movement.

Q. What portion of that comes from the East, from the inner and outer crescent, for example?

A. I think there is an exhibit in here, Mr. Bather, that [fol. 568] shows that information. It is Section 9 of Exhibit 4, which consists of two pages. And using the latest year, you will find that the movement from Illinois mines to the Chicago district is 5,796,787 tons; that was 19.505 per cent of the total movement into Chicago.

The total movement—shown down at the bottom of the column, 30,422,000 tons. Now, the eastern fields; that is,

Ohio and inner and outer crescent disfributed 16,003,700 tons, which is 52.5 per cent of all the coal.

Then there was 4,500,000 tons came in via rail and lake. The total eastern movement was 20,537,000 tons, or 67.5 per cent of the total movement.

Q. To the Chicago district?

A. Yes, sir. Does that answer your question?

Q. Yes, it does. Now, have you got the figures to show how much coal from the eastern district went to Rockford?

A. I haven't that information. I do know there is some movement to Rockford, though. The dealers handle some eastern coal, and your gas company there handles eastern coal.

Q. But you don't know how much that amounts to?

A. Well, approximately it amounts to about 10 or 11 cars a day.

Q. Well, that is immaterial; now, you mentioned the rates from the Brazil-Clinton district to Rockford, via the Milwaukee, being $1.80 as compared with $1.97 from mines [fol. 569] on other roads in that group; do you know if there is any movement of coal from the Brazil-Clinton district on lines other than the Milwaukee to Rockford during the past several years?

A. No, I don't know. The Milwaukee does not serve mines that are located on the other railroads that have the higher rate. So, if they shipped anything to Rockford it moved over those lines under the higher rate. I don't know what the movement was. We do not participate in those rates, so I have no way of knowing.

Q. You don't know whether there has been any movement from Brazil-Clinton district to Rockford under the $1.97 rate, then?

A. I cannot answer that question.

Q. Do you know if there is a substantial movement via the Milwaukee from the Brazil-Clinton district to Rockford?

A. Yes, there has been; we switch part of it after it gets there.

Mr. Bather: I think that is all, Mr. Examiner.

By Mr. Cardy:

Q. Mr. Nelson, will you refer to the tonnage statement; I believe it is in Exhibit 4, Section 8, page 2, which shows the tonnage from northern Illinois to Dixon; I notice that there is no tonnage shown from Fulton-Peoria to Dixon, Illinois. For our information, and otherwise——

A. To Dixon?

Q. Yes, to Dixon.

A. Yes, there is, Mr. Cardy.

[fol. 570] Q. Will you give us the reference?

A. On line 2, column M, page 2; I note that during the first six months of 1941 there was 5,118 tons; and then on the same line, in column O, you will find that during the last six months of 1941 there were 2,622 tons.

Q. The question was, is that the full tonnage; our information was that that tonnage is incorrect.

A. The first six months of 1942, that is the total tonnage from Fulton County and Victoria. The Victoria tonnage was reported by the destination lines as originating in Fulton County.

Q. In other words, opposite Victoria there is no tonnage shown; is that correct? But it is shown under Fulton-Peoria.

A. That is correct; I can give you the separation of Victoria, if you would like to have it.

Q. I would like to have it.

A. During the first six months of 1941——

Q. This is coming from Victoria, to Dixon.

A. You understand, Mr. Cardy, this tonnage that I am giving you is included in the Fulton County tonnage on this statement.

Q. Yes, I understand that.

A. During the first six months of 1941 there were 66 cars shipped from Victoria to Dixon, 3300 tons. During the last six months of 1941, 36 cars, 1800 tons. During the first six months of 1942, 63 cars, 3150 tons. I have esti-

[fol. 571] mated the tonnage there.

Q. In other words, the large volume moving from the Fulton-Peoria district to Dixon was from Victoria; is that true?

Mr. Kaier: Well, he has given the figures.

By Mr. Cardy:

Q. Now, Mr. Nelson, in adjusting the rates from the northern Illinois districts to points in northern Illinois, will you state approximately how many destinations increases are proposed, to points in Illinois?

A. From northern Illinois?

Q. Yes; would you say approximately 310? That is what our records show, and probably show it accurately; that is about right; I would like to call your attention——

A. The rates were increased?

Q. Yes.

A. Oh, no.

Q. Well, about how many; what is your estimate?

A. I have not counted the number of destinations.

Q. Well, there are a great many; there is a large number anyway?

A. I think that 100 would be more nearly correct, than 300.

Q. Now I will ask you to state, in arriving at the proposed adjustment, have you increased the rates to this proposed territory by 20 cents a ton to the various destinations, regardless of distance for measure of rates; in other words, you took the rates as they were, and to some [fol. 572] destinations you increased them 5 cents a ton, to other destinations you increased them 10 cents a ton, other destinations you increased them 15 cents a ton; and to Rockford, 20 cents a ton; is that not right?

A. Northern Illinois to Rockford?

Q. 20 cents.

A. We increased it 15 cents per ton over the interstate rate.

Q. You did not increase it 20 cents a ton to Rockford?

A. 20 cents a ton over the state rates.

Q. From Wilmington, didn't you increase it,—which is a point in northern Illinois district—20 cents a ton; $1.05 to $1.25?

A. That is correct, $1.05 state rate; and the increase is 15 cents per ton over the $1.10 interstate rate.

Q. Now I wish you would refer to page 5 of Section 5 of Robertson's Exhibit, which shows the proposed adjustment to DeKalb in the northern Illinois field; from Marseilles the present rate, or the mileage, average mileage is 65.1 miles; the present rate is $1.05; you propose to in-

crease that to $1.10. Now, take the Granville rate, the distance is 72.6 miles; the present rate is $1.05, and there is no increase proposed. Now take the rate from——

Mr. Biaett: Now, wait a minute, Mr. Cardy; let us follow that. Is that on page 5 of Exhibit 4?

Mr. Cardy: Yes, Section 5, page 5. Do you have it, Mr. Bather?

[fol. 573] Mr. Bather: Yes, but I do not check the distance that you read into the record here. Marseilles is 77.5, and Granville is 96.3.

By Mr. Cardy:

Q. I will take those corrections; I will read it from the exhibit, rather than the memorandum. Now take Minonk, Illinois, 113.4 miles; the present rate is $1.50, and you propose $1.55. Now, at Wilmington the distance is 74.6 miles; present rate is $1.35, and the proposed rate is $1.40. In your direct examination, or in answer to a question under cross-examination, you stated that generally speaking rates from Illinois to this territory were largely paper rates; is that correct?

A. Except from Wilmington.

Q. You limited that, except from Wilmington. Now, in applying the adjustment from that distance, you just took the rates as they were, disregarding distance, disregarding point of origin, disregarding destination, and added anywhere from 5 to 20 cents a ton; isn't that true, shown by your exhibit, generally speaking?

A. Where we added 5 cents a ton,——

Q. I know the reason for it, but isn't that a fact, that you did increase some 5 cents, some 10 cents, some 15 cents, and some 20 cents?

A. That is correct. It was necessary to handle it that way because of 4th Section difficulties.

[fol. 574] Q. And that there was no regard paid to distance; distance was not a factor in determining the level of rates that should apply in the northern Illinois field to destinations involved.

A. We increased the present rates a uniform amount.

Q. The distance was not any factor, was it; you do not consider distance?

A. We have shown the distance; we have shown you the level of the proposed rate.

Q. Now, just answer the question; you do not take distance into consideration in arriving at the rate from northern Illinois to DeKalb, do you?

A. We endeavored to apply uniform increase, so as not to disturb the relationship.

Q. Without taking up each one of the points separately, would you say that the situation at DeKalb is substantially the same as the situation at the other typical points of destination you have shown? You can answer that yes or no.

A. Well, we followed the same formula. I would like to point out this fact——

Q. Just answer the question.

A. Production at Granville——

Q. I want to ask you this: Whether or not you considered whether there was any movement on the present rates to destinations in the destination territory.

[fol. 575] A. We show movement under present rates.

Q. Take it to DeKalb: Isn't it a fact—refer to page 2 of Section 8, Exhibit 4; the last year, that shows that there has not been a pound of coal from the entire northern Illinois field.

A. There were 50 tons during the first six months of 1941.

Q. And that is the only movement; the last movement was the first six months in 1941; no movement in 1942.

A. It does not show any. Some of the other points, there is movement.

Q. All very slight.

A. There was movement to Dixon; a good sized movement to Freeport.

Q. How much movement to Dixon during the last——

A. 90 tons, the first six months of 1941.

Q. How many tons?

A. 90 tons. Freeport, during the first six months of 1941 there were 5,178 tons; the last six months of 1941, 4,555 tons; the first six months of 1942, 4,880 tons.

Q. That is from the northern Illinois district?

A. That was to Freeport; yes, sir, that is from the northern Illinois district.

Q. And that was to Freeport?

A. Yes, sir.

Q. Now, to these points——

[fol. 576] A. Here is Rockford, movement into Rockford was 5,900 tons in the first six months of 1941; 8,613 tons the last six months of 1941; and 1600 tons the first six months of 1942.

Q. Now, in 1941, give us the total tonnage that moved to Rockford, will you, from the northern Illinois district?

A. For the entire year 1941, northern Illinois to Rockford, 14,548 tons.

Q. How many in 1942?

A. The first six months, 1600 tons.

Q. In other words, it is fair to assume that there was a falling off of nearly 10,000 tons on the present rates, movement of coal from northern Illinois, probably Wilmington to Rockford; is that true?

A. Well, there was a decline in movement; it may not have been caused by the rates.

Q. In other words, rates might not have anything to do with that.

A. That is possible. 1942 has been somewhat of a peculiar year, due to the war.

Q. And the sole cause might have been the rates, the change in the rates to Rockford.

A. There wasn't any change in the rates.

Q. Didn't you increase the rate recently from Wilmington to Rockford 5 cents a ton?

A. 5 cents a ton?

[fol. 577] Q. Yes; it was $1.00, and went up to $1.05.

A. Under Ex Parte 148, yes.

Q. You don't know whether that 5 cents a ton had a material effect on the movement of that tonnage, do you?

A. All coal rates went up the same amount, so that could not have caused the decrease.

Q. Now, Mr. Nelson, we have a situation like this: short haul rates from northern Illinois, where they are trying to line up the entire adjustment of rates between Illinois and Indiana, and you find that there are practically no movements from the short haul points to destinations involved, can you tell me upon what theory you say that the present rates that you have increased could possibly be an undue burden on interstate commerce in any form whatsoever; in any manner; and if so, which—well, just answer the question. In other words, I will make it easy for you: is the situation in northern Illinois, entirely different from the

situation we have in the differential field, you might say, or those that are differentially related.

A. The average level of the Wilmington rate to the suspended points is 79.1 per cent of the H. & H. scale rate. Compare that with present rates to the comparative points; you will find that the present rates to comparative points are 83.3 per cent of the scale. In other words, the Wilmington rates are 4½ per cent lower.

[fol. 578] Q. What are you going to do about these rates that are about 130 per cent, that you increased from the northern Illinois field about 130 per cent of the H. & H. scale? I just want to find upon what possible theory can you disregard distance entirely, disregard rates, and disregarded destinations; you must say that those rates are an undue burden on interstate commerce by the H. & H. scale.

Mr. Stadell: Mr. Examiner, may we have that question read? I couldn't understand it, and I cannot see how the reporter could understand it.

Mr. Cardy: I will restate it.

By Mr. Cary:

Q. Mr. Nelson, where distance measure of the rates was not taken into consideration, how can you state that such rates are an undue burden on interstate commerce, by measuring those rates with interstate rates?

A. The rates that you have mentioned, these 130 per cent of the H. & H. scale are paper rates.

Q. Well, do I understand that all of the rates—do I understand that practically all of the rates——

A. The Wilminton rate is not that high; that is one that moves traffic.

Q. Well, that is true; what is that rate?

A. Proposed rate from Wilmington to Polo, Illinois, for example,——

Q. What about these other rates; if your method of com- [fol. 579] putation is right from some of them, the same rule ought to be applied to Wilmington.

A. As I explained in my direct testimony, we endeavored to increase all the rates the same amount; where we increased the rate 5 cents a ton from one district we endeavored to increase it the same amount from all the districts.

Q. In other words, as I understand, it is your contention that mere distance in using the H. & H. scale to find out what the percentage difference in distance indicates, a different level in the rates, and that is in all these answers you have given the basis for contending that the Illinois rates are on too low a level; is that true, generally speaking?

A. Yes; the proposed rate to Rockford from Wilmington, 76.7 per cent of the scale.

Q. Just answer my question.

A. To Rochelle is 78.8 per cent; to Polo it is 59.9 per cent. Those are not high rates; they are low rates.

Q. Disregarding whether there is any movement to the destination, or whether there is a falling off, any of those factors you did not take into consideration in ascertaining whether or not the present rates in Illinois are an undue burden on Interstate commerce, is that true?

A. Well, I testified in my direct testimony the reduction to a number of these points from northern Illinois is [fol. 580] small, and a large part of it is going trucks. I explained, I understand where a fine coal is shipped—I outlined in detail the reason for the fact that there was no movement under some of these rates. You are talking about rates that move no coal.

Q. Now, your Exhibit 11, just one question on that: That merely deals with the level of rates, the measure of rates, as you might say; does that indicate either one way or the other, whether or not the intrastate rates in Illinois are more profitable than the interstate rates moving to this destination territory; in other words, while the level might be thin, might not the revenue be just the reverse, so far as this exhibit indicates?

A. This exhibit merely indicates the level of the rates, the average level of the rates.

Q. And the level would not necessarily indicate the relative revenue, or whether or not one set of rates is more profitable than the other set of rates; is that true?

A. This exhibit does not show that.

Q. Just one other question: There has been a good deal of talk about this Indiana situation; Mr. Nelson, the Illinois Central, which serves the southern Illinois field direct to Rockford, similar to the Milwaukee Railroad, reduced their rates 17 cents a ton from their mines; would you consider that a serious matter, so far as operators on your line were concerned, or would you consider it a disturbance of

[fol. 581] a long established adjustment of coal rates obtaining in this terri ory; and would you do anything about it?

A. They published the rate.

Q. I am asking you, suppose we had a comparable situation here in Illinois; what would you do about it; would you leave your operators pay 17 cents higher than the operators on the Illinois Central, shipping to Rockford? Answer that the way you want.

A. They reduced their rates to the Milwaukee basis.

Q. You would reduce your rates to the Milwaukee basis?

A. I say they did; we do not serve——

Q. No; you understand the question I asked you: whether or not the Illinois Central, southern Illinois to Rockford, reduced their rate 17 cents a ton; what would you do, so far as your operators are concerned, would you permit that condition to exist, or would you reduce your rates to meet the Illinois Central, or would you try to get the Illinois Central rates up to their proper level?

A. You are assuming we serve the same district in Indiana.

Q. No, just putting forth a comparable situation, that we have in Indiana.

A. We made no change in the rates from Illinois.

Q. Well, you do not want to answer the question, is that it? Do you understand the question?

A. You want to know what I would do if the Illinois Central——

[fol. 582] Q. I want to know what your company would do to protect the shippers on your line of railroad if the Illinois Central reduced their rate from southern Illinois to Rockford 17 cents a ton, just the same as the Milwaukee reduced their rate from the mines on the Milwaukee Railroad to Rockford, Illinois?

A. I beg your pardon; I thought you were asking about Indiana. We serve Illinois fields, southern Illinois fields; and if the Illinois Central reduced their rate 17 cents a ton, we would possibly meet it. We would have to, if we got any business.

Q. In other words, in this territory here that is a test on the rates in this territory here, southern Illinois Linton district is a departure from any adjustment, practically, they would have in northern Illinois, is it not?

A. I didn't understand your question.

Q. I mean the adjustment that we have from Sullivan-Linton field to Rockford, where one road takes out certain mines in a fixed and established group, which mines are related to a number of other groups, and reduces the rates from those particular mines, it is against all the theories at least of rate making on the movement of coal from the Illinois and Indiana mines to destinations in Illinois and Indiana; is that true?

A. There must be a reason for it.

Q. Now, there is one other question: If the Illinois Cen- [fols. 583-647] tral also serves some mines in the Sullivan-Linton district—they have some mines there, do they not?

A. Yes, sir.

Q. Do you know whether or not they increased their rate to Rockford, or whether or not they have a lower basis of rates to Rockford than other mines in the district, and are on the same basis, I will say, as the Milwaukee rates?

A. The rate from Illinois Central mines Linton-Sullivan district to Rockford, applicable via Illinois General Railroad, is on the same basis as the rate applies via the Milwaukee.

Q. In other words, mines on the Illinois Central also take the Milwaukee basis of rates.

A. That is correct.

. . . . . .

[fol. 648] Q. Do you as an expert witness consider the question, I mean consider—or, strike the word consider—deem the question or the matter of the actual cost of hauling coal by carloads, or other quantities, for certain distances an important element in determining the question as to whether a given rate is adequate or compensatory?

A. The cost of handling the freight, of course, is something that should be given consideration.

Q. And by cost you mean actual out-of-pocket money incurred by the transportation system in hauling the freight for a given distance; that is correct, isn't it?

A. Yes, sir.

Q. Now, would you, going back to the question, in your opinion consider that an important element in determining whether a rate is compensatory or adequate, using your own words.

A. Sure.

[fol. 649] Q. Then, why haven't you in connection with this case, or the association, determined the actual cost to the system railroads in transporting the coal from the various areas to the affected points, and the comparative points, in arriving at the conclusions, opinions as to whether or not the existing rates are unjust and unreasonable or not, to use the words of certain other people in the case, improper?

A. I do not say the existing rates were non-compensatory.

Q. That was not what I asked you.

A. I said that they were low, compared with other rates; and not, in my opinion, bearing their fair cost of the traffic burden.

Q. Now, by those expressions, low and fair cost of the traffic burden, they refer only to comparative rates in other areas?

A. Comparing these rates with rates to the surrounding territory.

* * * * * * *

(Here follow 2 photolithographs, side folios 649A-649B-673)

[fol. 674] PETITIONERS' EXHIBIT No. 5

C. J. NELSON (resumed):

By Mr. Stadell:

Q. I would like to ask you a few questions, Mr. Nelson, about your Exhibits Nos. 8, 9, and 10. Have you them before you?

A. Yes, sir.

Q. Your Exhibit No. 8 shows the number of tons of coal produced and certain other information with respect to the distribution of the coal for the northern Illinois mines during the years 1937 to 1941. Your Exhibit No. 9 shows the same information for mines in the Fulton County district, Peoria County, and certain other individual mines during the period 1932 to 1941. Why did you start your Exhibit No. 8 with 1937 and your Exhibit No. 9 with the year 1932?

A. For no particular reason, except I wanted to show what I thought was representative production for recent years. The information contained in these two exhibits comes from the same source. The annual coal reports, Department of Mines and Minerals, State of Illinois.

Q. Which do you think is the more representative period, the period 1937 to 1941, or the period 1932 to 1941?

A. Well, I think that perhaps the longer period would—they are both representative, but I think perhaps the longer period would be more representative.

[fol. 675] Q. Now, on your Exhibit No. 9 you have in the fourth and fifth columns, which are headed slope mine, shaft and strip, and in the other the number of mines; but when you get down to Peoria County, for example, and Victoria, you have the number of mines shown between the two columns. Now, how can we determine what type of mines those are? For example, in Peoria County, how can we determine whether they are slope or shaft or strip?

A. Well, all of the mines in Peoria County are shaft mines, that is, all the mines with tonnages reported in this exhibit. The mine at Victoria is the strip mine. The mine at Alpha, shown at the top of the second page of this exhibit, is a shaft mine. The mine at Rushville is a strip mine, and the mine at Atkinson is a strip mine.

I think, Mr. Stadwell, that you will recall in my direct testimony I described the mines at these points and stated whether they were shaft or strip.

Q. Now, in the third column from the righthand side of the exhibit, under the heading "Sold to truck trade," this exhibit purports to show the number of tons of coal at mines in the various districts, and that would be coal either sold to trucks or that was trucked from the mine, as distinguished from tons shipped by rail, is that right?

A. That is right.

Q. And referring to Victoria, Illinois, in that column you [fol. 676] show no tonnage whatever sold to truck trade. But you know, do you not, that there was a large quantity of coal sold by that mine to the truck trade?

A. The coal company have a truck chute, which is located at Wataga, served by the Galesburg & Great Eastern Railroad, which transports the coal, the cars from the mine to the truck chute for a transportation charge. Therefore, the coal that was sold to trucks at the chute was not shown.

Q. That railroad is owned by the mining company?

A. That is right.

Q. And whatever transportation charge the mining company would pay the railroad would be in effect paid to the mining company itself, would it not?

A. Well, the Galesburg & Great Eastern Railroad is owned by the coal company and the charge on this coal would, of course, go into the coffers of the railroad.

Q. Approximately how much of the tonnage from the mine at Victoria was sold in that manner to the truck trade, do you know, in 1941, as illustrative?

A. I don't know the exact tonnage, but the estimate that I have is about 50,000 tons in 1942.

Q. Where did you secure that estimate?

A. From our local people in the Galesburg territory.

Q. Now, will you refer to your Exhibit No. 10, please, page 2. You show there from southern Illinois to Illinois [fol. 677] destinations, except Chicago, Peoria, Pekin, East St. Louis and St. Louis, you show a total of 3,288,637 tons in 1941, is that correct?

A. Yes, sir.

Q. Included in that are several hundred thousand tons of coal that moved from southern Illinois to Alton and East St. Louis, Illinois; that was moved outside the State of Illinois by barge, is there not?

A. Yes, sir—not to East St. Louis. The East St. Louis would be shown under East St. Louis. But the Alton tonnage would be included in the columns that you refer to, in the 3,288,000 tons, the Alton tonnage would be in there.

Q. In other words, that tonnage was not consigned to any point in Illinois for ultimate use in Illinois. It was consigned to Alton for ultimate use at St. Paul, Minneapolis, or some point outside the state of Illinois?

A. It was shipped to Alton for movement by barge beyond, and was not consumed at Alton.

Q. Then, in connection with the East St. Louis tonnage that you show in the last column of page 2 of Exhibit No. 10, the tonnage there for 1940, 1941, and probably 1939, would also include the barge, tonnage that was shipped from the southern Illinois district to East St. Louis for transhipment beyond by barge, outside the state?

A. Yes, sir.

Q. Would that same thing be true with respect to the total [fol. 678] tonnage you show from the Belleville, Illinois, district to Illinois miscellaneous destinations and East St. Louis?

A. Yes, sir.

Q. And also the DuQuoin, Illinois, district?

A. Yes, sir.

Q. Now, in Exhibit No. 10 you show the tonnages shipped from the origin groups to the destination territory included in the exhibit for the years 1932 to 1941. Are you aware of the fact that there was a miner strike in 1932 that closed down the Illinois mines for some period of time during that year?

A. I don't believe that I remembered that, Mr. Stadell. At least, I did not take it into consideration when I had this exhibit prepared.

Q. If the mines only operated nine or ten months during the year 1932 because of the miner strike, do you think it would be fair to draw a comparison between the reduced tonnage shipped in 1932 and the tonnage shipped in 1941 for a full year?

A. No, I wouldn't.

Exam. Trezise: I am not following your reduced tonnage. Are you talking about page 2 of Exhibit 10?

Mr. Stadell: I am talking about the entire exhibit.

Exam. Trezise: Well, it does show in the entire exhibit there was a reduced tonnage in 1932, page 2, does it not?

Mr. Stadell: The point is this, Mr. Examiner, that he begins the showing in the exhibit with the tonnage shipped [fol. 679] during the year 1932. I asked him if he was aware there was a miner strike during that year and because of the miner strike the mines were shut down one or two months, and therefore, were able to operate and ship coal but approximately ten months during that year.

Exam. Trezise: I am assuming there was a reduction in 1932. I noticed the very first page No. 2, there was an increase—not an increase, but there was more moved from southern Illinois in 1932 than in 1933 or 1934.

Mr. Stadell: We are comparing 1932 with 1941.

Exam. Trezise: Well, you were going to ask him if there was a strike in 1933 and 1934 too, then?

Mr. Vesey: No, but I assume as part of that Mr. Stadell would show those conditions as prevailing in those years, 1932 and 1933, as non-comparable years to the year 1941. I presume that is part of the showing.

Mr. Stadell: Yes, that is right. It would probably be better if we show the thing in our testimony, rather than through this witness, if he is not familiar with it.

Exam. Trezise: All right, thank you.

By Mr. Stadell:

Q. You were asked some questions before when you were on the stand by Mr. Wilkinson with respect to an alleged destruction on the differentials between the Indiana groups to the territory involved. Is there any order of the Interstate Commerce Commission that requires the present dif- [fol. 680] ferences in rates between the Indiana groups themselves or as between the Indiana groups, on the one hand, and the Illinois groups, on the other, to the territory involved, to be maintained?

A. I do not know of any.

Q. Have the differentials between those groups as I have stated them ever been prescribed by the Commission, to your knowledge?

A. Not to my knowledge. I think they are voluntary adjustments made by the carriers.

Q. Did the railroads or the Illinois Freight Association make any study to determine whether there has been any increase or decrease in the tonnage either from the Illinois

mines or from the Indiana and Western Kentucky mines to the Northern Illinois territory involved in these proceedings during the last several years?

A. No, sir, not that I know of.

Q. You don't know then whether the tonnage from the Illinois mines to the territory involved has increased or decreased in comparison with the tonnage from the interstate mines in Indiana and Western Kentucky?

A. Except as might be reflected by this Exhibit No. 10, which is not very definite. You can't segregate the tonnage to this particular territory in Northern Illinois.

Q. And you and the carriers do not know whether the tonnage from the Southern Illinois to the Northern Illinois [fol. 681] suspended points has decreased or increased in relation to the tonnage shipped by those mines to the comparative interstate points, do you?

A. We made no particular study that I know of.

Exam. Trezise: And your question relates to the rail movement alone, does it?

Mr. Stadell: That is correct, yes.

By Mr. Stadell:

Q. You said that the carriers had determined that the intrastate rates from the Illinois mines to the Northern Illinois territory involved were not bearing their fair share of the transportation burden. What is that transportation burden that you had reference to and how much of it are the present intrastate rates bearing?

A. I think I expressed an opinion, Mr. Stadell, that was based on the level of the rates to the representative suspended points, which the carriers are using in this case, compared with the level of the rates to the representative comparative points, and it shows that the former is lower than the latter. My opinion was based on that fact.

Q. Well, you do not know then what the transportation burden that you referred to is in dollars and cents or what proportion of it the present intrastate rates are bearing?

A. No.

Q. Your opinion that they were not bearing a fair share of that transportation burden is based solely upon the [fol. 682] showing made in your Exhibit No. 11, which compares the present and suspended rates from the various

groups to the suspended territory and compared territory by use of the Holmes and Hallowell Scale?

A. That is right.

Exam. Trezise: Do you mean that that is the only comparison that you have in your Exhibit 11? You compare something besides with the Holmes and Hallowell Scale, do you not?

Mr. Stadell: Not in Exhibit No. 11, no.

Exam. Trezise: It doesn't do that?

Mr. Stadell: As a matter of fact, that is all the record contains, the entire record.

Exam. Trezise: I got the impression that there was a comparison there of the representative suspended rates with the representative comparative rates as well as with the Holmes and Hallowell Scale.

Mr. Stadell: By use of the Holmes and Hallowell Scale.

Exam. Trezise: Yes, but at the same time the rates are there. You can see what they are and you can compare the representative suspended rates with the representative comparative rates, if you didn't have any Holmes and Hallowell Scale there. That is the only point I make. There is nothing profound about it at all.

Mr. Stadell: That is right, you can compare the rates in dollars and cents.

The Witness: Mr. Examiner, the Holmes and Hallowell [fol. 683] Scale was simply used as a yardstick to measure the rates.

By Mr. Stadell:

Q. Well, you followed the Commission's decisions in these coal cases for a long period of time, have you not, Mr. Nelson, and haven't you read repeatedly where the Commission has said that the Holmes and Hallowell Scale is an improper yardstick to use to compare rates from various origins wherein distances vary, where you have short hauls versus long hauls?

A. I don't recall that they have said that factor. They have used it in many rate cases. But you could use most any yardstick you would want to in this instance and I think it would reflect lower level rates.

Q. But you didn't use any other yardstick but the Holmes and Hallowell Scale, did you?

A. That was all that I used.

Exam. Trezise: Well, you did show the distances though. You showed the distances to twelve destinations, from Alpha, and the distance is 135 miles and the rate is $1.51 proposed. From Alpha to the 14 destinations the distance is 134 miles, one mile less, and the rate is $1.62 or 11 cents higher. That is a comparison, isn't it?

The Witness: Oh, yes, surely.

Exam. Trezise: You don't have to have the Holmes and Hallowell Scale to bother with there, do you?

The Witness: Oh, no. You can make comparisons.

[fol. 684] Mr. McElroy: Do you use anything else in making the freight rate other than the distance?

The Witness: Oh, yes.

Mr. McElroy: What do you consider besides distance?

The Witness: Well, the volume of the traffic involved and the competition that is involved, the average loading traffic per car, and possible claim expense that might be involved, various things; there are many things which you consider.

Mr. McElroy: At any place in these exhibits do the conditions or things you have just described show up, that is, are they reflected in your exhibits anywhere?

The Witness: No, I think not. These exhibits are based on distances.

Mr. McElroy: Where the volume of traffic is heavy as compared to another point where the volume of traffic is light, do the freight rates differ or should they differ?

The Witness: Well, it all depends.

Exam. Trezise: You are going to use transportation conditions there, too? If you cross a bridge going to one place would you charge more than if you didn't have to cross the bridge, is that what you mean?

The Witness: Well, in a general way, yes. You take all those things into consideration, Mr. Examiner.

Mr. McElroy: But these exhibits just take into consideration the distance, is that right?

[fol. 685] The Witness: These exhibits show some tonnage data. I think that there is some tonnage information in Robertson's exhibit.

Exam. Trezise: Your Exhibit 11 is merely a summary and the average of distances and rates?

The Witness: That is correct.

By Mr. Bather:

Q. In other words, Mr. Nelson, as I get your testimony, your opinion was based entirely upon the comparison of the rates to the 12 destinations involved as compared with the 14 representative destinations, that is, the rates and the distances? Is that the basis of your opinion, that the rates to the affected territory to which the rates are now under suspension are too low on that theory?

A. I don't believe I understand your question, Mr. Bather.

Q. Well, I am trying to get at the basis of your opinion. Now, as I analyze these exhibits, your opinion is based entirely upon a comparison of the rates from the different origin groups to the 12 representative points, or the 12 representative points in the territory affected as compared with the 14 comparative points.

Mr. Vesey: If the Examiner please, I will object, as a courtesy to my brother Mr. Stadell. He started a line of cross-examination and he was interrupted. As far as his cross-examination is concerned, I submit the whole trend and tenor has been lost. I think as a courtesy to him, I will object.

[fol. 686] Mr. Bather: All right, I will reserve my cross-examination.

Exam. Trezise: Well, I think the Examiner will apologize to Mr. Stadell. He should be permitted to finish his cross-examination. We will ask that he kindly accept our apology. Go ahead, Mr. Stadell.

By Mr. Stadell:

Q. Well, coming back, Mr. Nelson, to the answer you gave to Mr. McElroy about the elements that you take into consideration in measuring rates, and one of the elements that you gave was the average loading per car, is that right?

A. Yes, sir.

Q. You are familiar, are you not, with the statement made by the Commission in its report in the Holmes and Hallowell case that the loadings of coal from the Lake Superior dock, which moved on that scale or for which the scale was prescribed, was in box cars and averaged but about 35 tons per car as compared with an average loading of 50 tons per car from Illinois in open top cars?

A. Yes, sir.

Q. Do you think that is an element to be taken into consideration when you use the Holmes and Hallowell Scale, when measuring the rates from Illinois mines to Northern Illinois points?

A. Well, Mr. Stadell——

Q. Well, answer the question. Do you?

A. As I stated before——

[fol. 687] Q. Is it an element to be taken into consideration in measuring the rates when you use the Holmes and Hallowell Scale?

A. I don't think so in this instance, because we simply used the scale as a measuring stick, and we could use some other scale if we wanted to and get a similar result.

Q. And the scale was prescribed to apply on coal that moved in quantities of about 35 tons per car, and you are using 100 per cent of that scale to measure the rates on that scale?

Mr. Kaier: He just told you he wasn't, Mr. Stadell. He told you he was measuring one point against another.

Mr. Stadell: And he is also, as I understand it, using the Holmes and Hallowell Scale to show what percentage the rates in this territory should be in this scale. He made that in his testimony. He said the Commission had prescribed rates in this territory 85 per cent of the scale.

By Mr. Stadell:

Q. Well, you haven't given any consideration to that in your Exhibit 11 or the exhibits where you use the Holmes and Hallowell Scale as a yardstick, have you?

A. No. We took into consideration the distances.

Q. The distances and the scale?

A. The distances and rates, and we measured the rates and the distances by using the scale. The fact that the average loading from the Duluth-Superior docks might be——

Q. Well, you have answered sufficiently.

A. (Continuing) —might be lighter or heavier than it is [fol. 688] from Illinois didn't make any particular difference, as I see it, in so far as this comparison is concerned.

Q. Well, you didn't give any consideration to that element; you just applied the scale to the distances in the exhibit?

A. Used it as a yardstick.

Q. Another element you referred to was claim expense. Do you know of any commodity on which the claim expense is less than on coal?

A. Oh, yes, I think there are other commodities. However, the claim expense on coal is not very heavy.

Q. What are other commodities you have reference to?

A. Sand, gravel.

Q. How does the claim expense on those commodities compare with the claim expense on coal, do you know?

A. It would be slightly less, it is my recollection.

Q. Another element you referred to was the volume of traffic. By that do you mean where the volume of traffic was heavy that the rates could be lower than where the volume of traffic was light—on a lower level?

A. Oh, not in all instances, no, sir.

Q. Well, what would the instances be where that element would not apply?

A. Well, Mr. Stadell, I was asked a question about the various things that are usually taken into consideration in making freight rates. I attempted to answer that ques- [fol. 689] tion. I did not state that all of those things were taken into consideration in making this comparison.

Q. Well, I realize that.

A. We have a group adjustment here and many of these rates—for that reason you can't always measure rates on volume of traffic.

Q. Were you finished?

A. Yes, sir.

Q. Well, you know, do you not, that the volume of coal traffic and the volume of all traffic within Illinois is many, many times the volume of traffic from the Lake Superior docks to destinations in Minnesota and South Dakota to which the Holmes and Hallowell Scale was prescribed to apply, do you not?

A. Yes, that is true.

Mr. Bisceglia: How many times? Let us be a little more specific.

By Mr. Stadell:

Q. All right, how many times?

A. Well, I couldn't tell you how many times.

Q. Well, will you be willing to furnish that information?

showing us the traffic density in the territory in which the Holmes and Hallowell Scale applies and in Illinois, and furnish it sometime before the hearing is closed?

Mr. Biaett: Well, I am sorry, but I don't understand just what you want. One minute you ask for shipments of coal and the movement of coal and the next minute you ask for [fol. 690] traffic density.

Mr. Stadell: Well, for the traffic density in the states and over the lines of railroad over which the Holmes and Hallowell Scale applies from the Lake Superior docks, and by railroads in Illinois, that is, total traffic density, and if you can break it down as to coal I would like to have that too.

Mr. Biaett: Mr. Stadell, we are submitting the Holmes and Hallowell Scale as a yardstick by which to measure these rates and secure the percentages of the rates to the suspended destinations and the compared destinations. Now, the Commission in that report speak for themselves, and we are not asking for any particular percentage of that scale or for that full scale to be applied here. Now, there are a lot of other factors, other than what you mentioned. For example, the Commission in that case stated there was a return movement, an inbound movement of grain to the Lake Superior docks for which this equipment was used. It wasn't a 50 per cent empty movement such as you have in Illinois. There are a lot of other factors you would have to get into, if we are going to get into it at all.

Mr. Stadell: We would be willing to go into all of it.

Mr. Biaett: It is entirely up to you if you desire to go into them, but we are submitting the scale comparisons for the purposes shown on the exhibit.

Exam. Trezise: Well, Mr. Biaett, I am not following you. I got lost at that last corner, I guess. Now, Mr. Stadell, [fol. 691] may I ask Mr. Nelson a question.

Is it your intention to compare a reasonable rate with the relation that it bears to the Holmes and Hallowell Scale? Is that your intention, to do that? I didn't understand it was. But do you merely intend to use the Holmes and Hallowell Scale as a basic yardstick to compare two different sets of rates?

The Witness: The latter is true, Mr. Examiner.

Exam. Trezise: Now, in such measuring of these two rates, would it make any difference whether the loading

under the Holmes and Hallowell Scale was one ton per car or 50 tons per car?

The Witness: I think not, and I so explained in answer to Mr. Stadell's question.

Exam. Trezise: Now, how does that tie in with your statement?

Mr. Biaett: That is the point I was trying to make, Mr. Examiner, plus the fact that if we go into these elements concerning the inherent reasonableness of the Holmes and Hallowell Scale as applied to this territory, we have got to go into all of them.

Exam. Trezise: Well, it is the Examiner's understanding that Mr. Nelson is not using the Holmes and Hallowell Scale for that kind of a purpose at all.

Mr. Biaett: Well, that is my understanding also, Mr. Examiner.

[fol. 692] Exam. Trezise: It wouldn't make any difference what the loading was under the Holmes and Hallowell Scale, if you use that Holmes and Hallowell Scale merely as a basic yardstick to compare two sets of rates.

Mr. Wilkinson: Mr. Examiner, may I interject here, with Mr. Stadell's permission, that in so using the Holmes and Hallowell Scale you must assume like transportation conditions between the compared rates.

Exam. Trezise: That is right.

Mr. Wilkinson: And I am wondering whether or not Mr. Nelson in his Exhibit No. 10 is assuming like transportation conditions, as to the movement of coal from Illinois and Indiana to this territory and with the movement of coal from Western Kentucky to this territory.

Mr. Stadell: Exhibit 11 that is, Mr. Wilkinson.

Mr. Wilkinson: Or Exhibit 11. He has made no distinction between them, but I am wondering if he intends to assume that the transportation conditions from Western Kentucky and Illinois and Indiana origin groups are the same.

The Witness: Well, Exhibit No. 11, Mr. Wilkinson, simply is a comparison of the rates and distances from the various origin districts to these representative destinations as measured by the use of the Holmes and Hallowell Scale. The transportation conditions are not reflected by this exhibit.

Exam. Trezise: Does that answer your question?

[fol. 693] Mr. Wilkinson: Yes.

Mr. Stadell: Mr. Examiner, I want the record very, very clear on the point you have raised here, and that is the purpose for which the respondent and petitioning railroads are offering the rate comparisons contained in their Exhibit No. 11 and other exhibits in which they use the Holmes and Hallowell Scale. What I have in mind is this—I may ask Mr. Nelson a question on this point.

By Mr. Stadell:

Q. In answer to the Examiner's question you stated that you were using the Holmes and Hallowell Scale in your Exhibit No. 11 and other exhibits purely and solely as a yardstick to measure the rates from the origin group involved to the representative suspended points as compared to the rates from those origin groups to the representative comparative points, is that right?

A. Yes, sir.

Q. And you are not offering those exhibits to show, for example, that the rate from the Southern Illinois District to the representative suspended points, which average 62.4 per cent of the Holmes and Hallowell Scale, is unreasonably low or in any respect otherwise unlawful merely because it is that percentage of that scale instead of being 85 per cent or 90 per cent, is that correct?

A. Well, I don't know that I understand your question entirely, Mr. Stadell.

[fol. 694] Q. Well, you say that you are using the scale merely to compare the rates to the suspended and the representative points. That is correct, isn't it?

A. Using it as a measuring stick in making the comparison.

Q. And the mere fact that the average rates from the Southern Illinois group to the 12 representative suspended points shown on Exhibit No. 11 average 62.4 per cent of the Holmes and Hallowell Scale is not to be taken as showing that those rates in and of themselves are unreasonably low or unreasonably high or otherwise unlawful?

A. Well, when you take that——

Q. Can't you answer the question, Mr. Nelson?

A. I will endeavor to.

Q. I would like to get an answer to that question. I want to know what this exhibit means.

Mr. Biaett: I think the purpose of the exhibit is apparent.

Exam. Trezise: Now, just a minute. The question is, do you consider the rates here under consideration unreasonable because they are a different percentage of the Holmes and Hallowell Scale, one way or the other? Is that it substantially?

Mr. Biaett: The question is a little bit broader than that.

Mr. Stadell: Well, read the question.

Exam. Trezise: Let the question be read then.

(Question read.)

[fol. 695] Mr. Stadell: I would like to get an answer. I would like to find out what the purpose of this exhibit is now. I would like to know whether the purpose is as Mr. Nelson stated to the Examiner or whether it is something else.

The Witness: Well, Mr. Stadell——

Mr. Stadell: Will you answer the question?

The Witness: I will endeavor to. I will have to answer it in my way. I can't answer it yes or no.

Mr. Stadell: Let us have a direct answer. You gave the Examiner a direct answer.

The Witness: Well, I don't remember what direct answer you are referring to.

Exam. Trezise: That direct answer was that "the latter is true." I said, do you merely intend to use it, meaning the Holmes and Hallowell Scale, as a basic yardstick to compare two different sets of rates, and you said, that was true.

The Witness: Yes, sir, that is true, and when by using that yardstick you show a certain level of rates to the representative suspended points and another level of rates to the representative comparative points, that is an indication, in my opinion, that the former is depressed or low. It should be increased. Now, you could use some other yardstick and make the same kind of a showing.

Mr. McElroy: You have said that half a dozen different times, but that doesn't answer the question Mr. Stadell [fol. 696] asked you.

The Witness: Well, I don't know that I could answer it any other way. That is the answer I know.

By Mr. Stadell:

Q. Let me ask you this, then: aside from the fact that the rates from the origin groups shown on your Exhibit No. 11 to the representative suspended points are a different percentage of the Holmes and Hallowell Scale than from those groups to the representative comparative points, what significance are we to attach to the percentages that you show the rates from those groups to the suspended points to be of the Holmes and Hallowell Scale? Standing alone, what does that section of your exhibit mean, if anything?

A. It means that the rates to the suspended points are low as compared to the rates to the representative comparative points, and that the carriers are endeavoring to increase them to a higher level, so as to be more in harmony with the general adjustment.

Q. Let us find out about that. You say that the rates are low. You mean merely because they are a different percentage of the Holmes and Hallowell Scale?

Mr. Kaier: Different than what?

Mr. Stadell: Than to the comparative points.

The Witness: That, in my opinion, is an indication.

By Mr. Stadell:

Q. That is the only reason you say they are low, is that right?

[fol. 697] A. Well, you could use the mileage, you could use mills per ton mile, you could use any other scale or yardstick and make a similar comparison.

Q. Well, because the rates from the origin groups involved to the suspended points are a little lower possibly as measured by percentage of the Holmes and Hallowell Scale or ton mile earnings than the rates from those groups to the comparative points, that is the reason that you say they are low, is that right? That is the only reason you say they are low?

A. The comparison shows they are low, Mr. Stadell.

Q. Well, that is the only reason, isn't it, that you say they are low?

Mr. Biaett: Are you confining the witness to this exhibit?

Mr. Stadell: Any of the exhibits you put in showing the

rate comparisons. This is merely a summary of them. What was your answer, Mr. Nelson?

The Witness: Well, this comparison shows they are low, Mr. Stadell.

By Mr. Stadell:

Q. I say, that is the only thing on which you base your opinion, that comparison, that they are low, is the only thing that you base your statement on, is that right?

A. Well——

Q. Did you answer the question?

A. No, I did not, Mr. Stadell.

Q. Well, what else have you got to show that they are low?

[fol. 698] A. There has been a lot of testimony put in this record.

Q. Yes, I know there has. I am trying to find out what it is all about.

A. And I think the testimony indicates——

Q. I don't want you to characterize the testimony, Mr. Nelson. The record will speak for itself. Let me ask you this——

Exam. Trezise: Could we find out, this Holmes and Hallowell Scale that you have on your Exhibit 11, is that the basic scale that the Commission prescribed or is it a present scale brought up to date? Which is it?

The Witness: It is a present scale brought up to date.

Exam. Trezise: With a seven and a half cents increase added?

The Witness: No. The general increases have been added.

Exam. Trezise: Of seven and a half cents, is that right?

The Witness: Ex Parte 115 increases have been added.

Exam. Trezise: Then it is not the scale that the Commission prescribed, but it is the scale brought up by seven and a half cents added, compared with your present rates with 15 cents added. I am making this point because somebody mentioned 85 per cent of the Holmes and Hallowell Scale, and that is certainly confusing to the uninitiated. When we spoke of 85 per cent of the Holmes and Hallowell Scale, we are speaking of the basic scale. But since that time the Holmes and Hallowell Scale has been increased seven and a half cents, and these other rates here, I guess [fol. 699] most of them have been increased 15 cents. So

there is a variation of seven and a half cents, and the question I was going to ask Mr. Nelson in that respect, it would be unfair then to undertake to compare the Holmes and Hallowell scale as prescribed with the rates under consideration which have been increased, a good many of them anyhow, by 15 cents.

The Witness: Well, Mr. Examiner, you stated the scale was increased seven and a half cents. We increased the scale in the same manner that the rates were increased, five, ten and fifteen, or whatever the increase was according to the rate.

Exam. Trezise: Oh, you did. Then these are not the rates that the railroads charge, this Holmes and Hallowell Scale, is that right?

The Witness: I stated we simply used that scale as a measuring stick, Mr. Examiner.

Exam. Trezise: My point then is that it would be unfair to use it in any other way than merely as a measuring stick of two other rates. That is what you told me a while ago.

The Witness: I don't know that I said it would be unfair.

Mr. Stadell: That is the reason I am confused. I don't know. One minute he says one thing and the next minute something else.

The Witness: Well, Mr. Stadell, I have said before and I will say it again that we made this comparison using the distances and the rates and the H & H Scale, the latter [fol. 760] being as a yardstick, to show the level of the rates to the suspended points as compared with the level of the rates to the comparative points.

Mr. Stadell: Well, I know all that. The exhibit shows that.

Exam. Trezise: Well, you know, Mr. Nelson, or is this a fact, that in order to make the increases in the Holmes and Hallowell Scale under which the coal moves from the Head of the Lakes you didn't add 15 cents, did you, in making those increases? You added only seven and a half cents. Is that right? Now, I am asking you.

The Witness: It is my recollection that we increased the scale according to the general increases or scale in 115, and we used that as a yardstick.

Exam. Trezise: All right, we will just let it stand that way. Is that your recollection, that it was seven and a half cents?

The Witness: No.

Mr. Kaier: Mr. Examiner, may we determine what the fact is as to how much the scale was increased?

Exam. Trezise: Yes.

Mr. Kaier: Apparently Mr. Nelson doesn't know.

Exam. Trezise: All right, let us go on, Mr. Stadell.

Mr. Stadell: Well, I had a question pending some time ago, to which I didn't have an answer. I don't know whether [fol. 701] I can get an answer or not, and that was on the point as to the purpose of the exhibit.

Exam. Trezise: Mr. Nelson is willing to answer all the questions he can. Now, you make them clear enough to him and I can almost guarantee Mr. Nelson will answer them.

Mr. Stadell: The only point I had in mind is I want to find out whether Mr. Nelson attached any importance or the railroads attached any importance to the fact in and of itself that the rates from the Southern Illinois District to the representative suspended points average 62.4 per cent of the Holmes and Hallowell Scale, whether it is their contention that because the rates are that percentage instead of being some other percentage or higher percentage, that that shows they are unreasonably low or unlawful. Now, that goes beyond the purpose that he stated this exhibit was for in all his answers to you.

Exam. Trezise: Can you say, Mr. Nelson, that that does go beyond the purpose of the exhibit and that the purpose of the exhibit was confined to the answers that you made to the Examiner's questions?

The Witness: Well, when that shows that it is 62.4 per cent of the scale that you use in making this comparison, in my opinion, that indicates that the rates are unreasonably low.

Exam. Trezise: In comparison with what percentage of the Holmes and Hallowell Scale of the rates that are in [fol. 702] existence to the comparative points?

A. Of 70.4 per cent.

By Mr. Stadell:

Q. And that is the sole comparison that we are to draw from your Exhibit 11 as between the percentage that the rates are to the suspended points and the percentage that they are of the Holmes and Hallowell Scale to the comparative points?

A. That shows the——

Q. Can't you answer the question yes or no? That is what you stated to the Examiner. I just wanted to be certain that that is the purpose of the exhibit and the other exhibits that show like comparisons.

A. Mr. Stadell, I don't think that question can be answered yes or no.

Q. Well, you mean that you don't know what the purpose of the exhibit is?

A. The purpose of the exhibit is to show the level of the rates that we are proposing as compared with the level of the rates to the comparative destinations.

Q. That is the only purpose, is that right?

A. To show——

Q. Is that the only purpose of the exhibit?

A. That is the purpose, one of the principal purposes of the exhibit, to show the level of the rates. They are low. They should be increased.

[fols. 703-704] Exam. Trezise: Do you mean the level of the rates are a lower percentage of the Holmes and Hallowell Scale than the other rates that you have cited in comparison?

The Witness: They are a lower percentage.

Exam. Trezise: Well, is that the purpose of the exhibit only?

The Witness: No, that is not the only purpose of the exhibit. The purpose of the exhibit is to show the level of the proposed rates as compared to the level of the present rates to the comparative points.

Exam. Trezise: And you measured that by the Holmes and Hallowell Scale?

The Witness: That is right. We used the H & H scale as a measuring stick.

By Mr. Stadell:

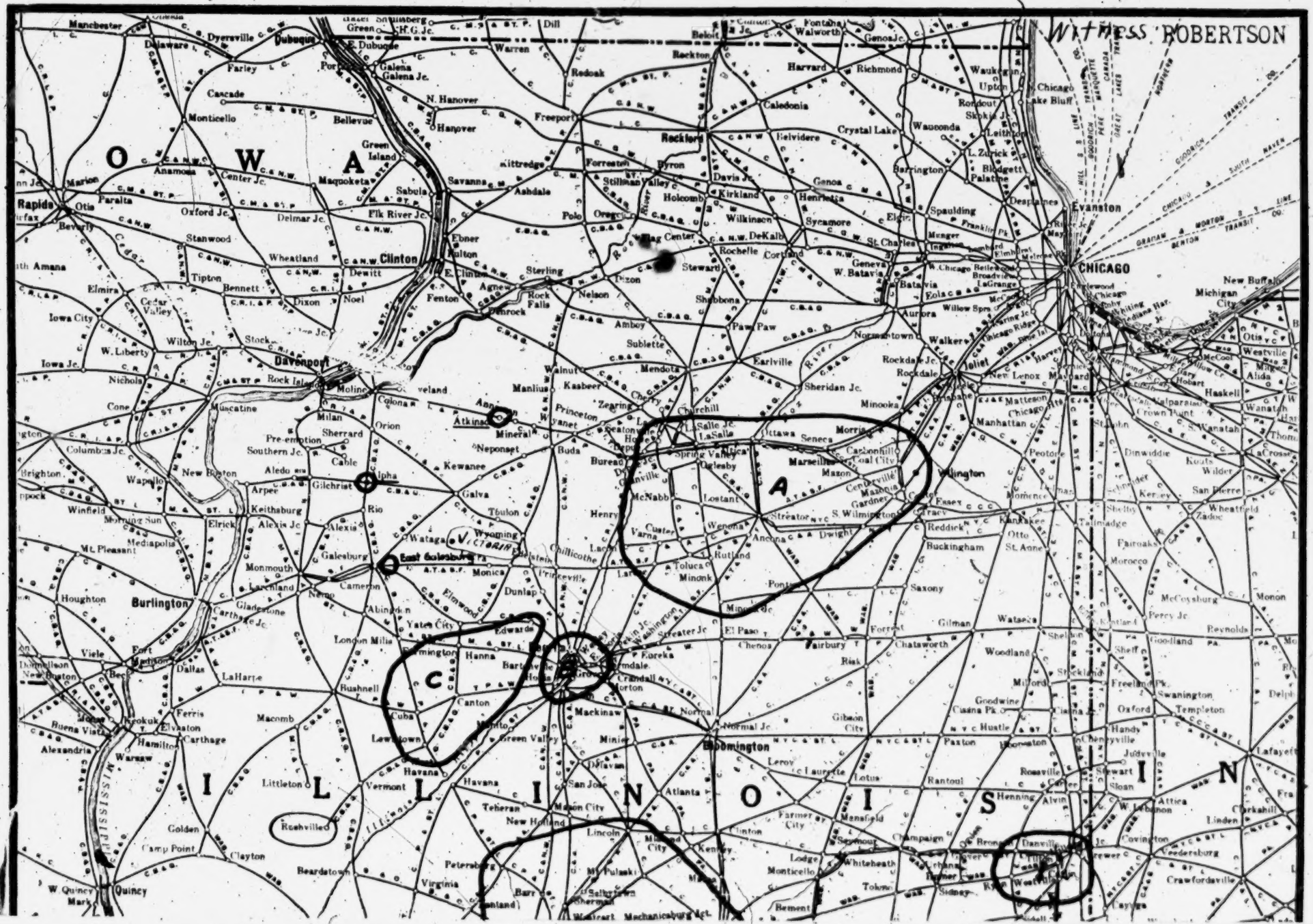
Q. You say the rates to the suspended points are low?

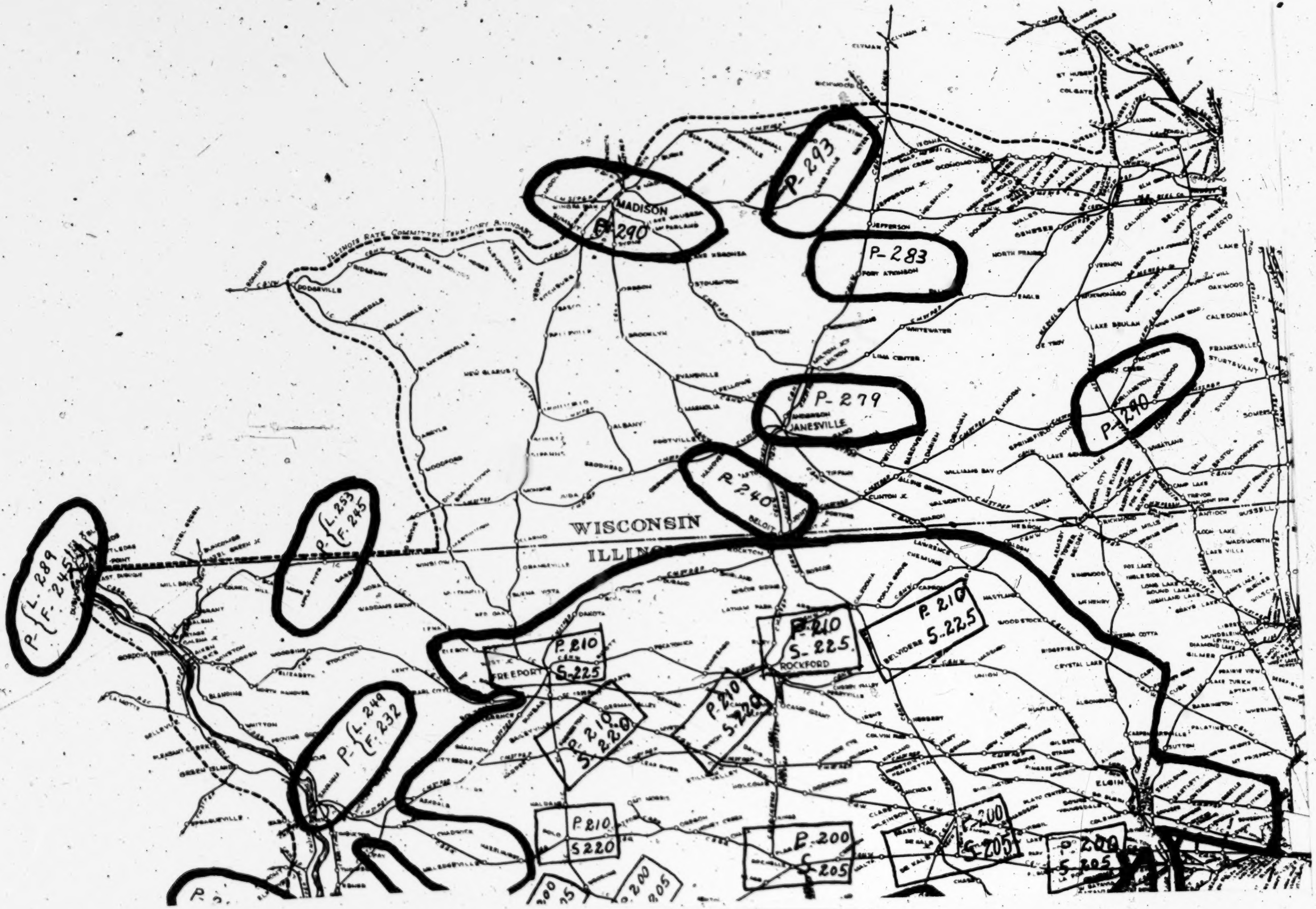
A. That is right.

Q. The rates shown on your Exhibit No. 11 and the other exhibits in the record of the railroads show the gross rate, that is, just the rate, and it shows nothing with respect to the revenue that the railroads receive for hauling this traffic, is that correct?

EXHIBIT NO. 1

COAL PRODUCING GROUPS IN ILLINOIS, INDIANA AND WESTERN KENTUCKY.




ILLINOIS RATE COMMITTEE TERRITORY BOUNDARY
MADISON
P-290
P-293
P-283
P-279
P-290
P-240
P-253
F-245
P-289
F-245
P-249
F-232
P-210
S-225
P-210
S-220
P-200
S-205
WISCONSIN
ILLINOIS
ROCKFORD
FREEPORT
ELGIN
JANESVILLE
BELVIDERE

PAGE

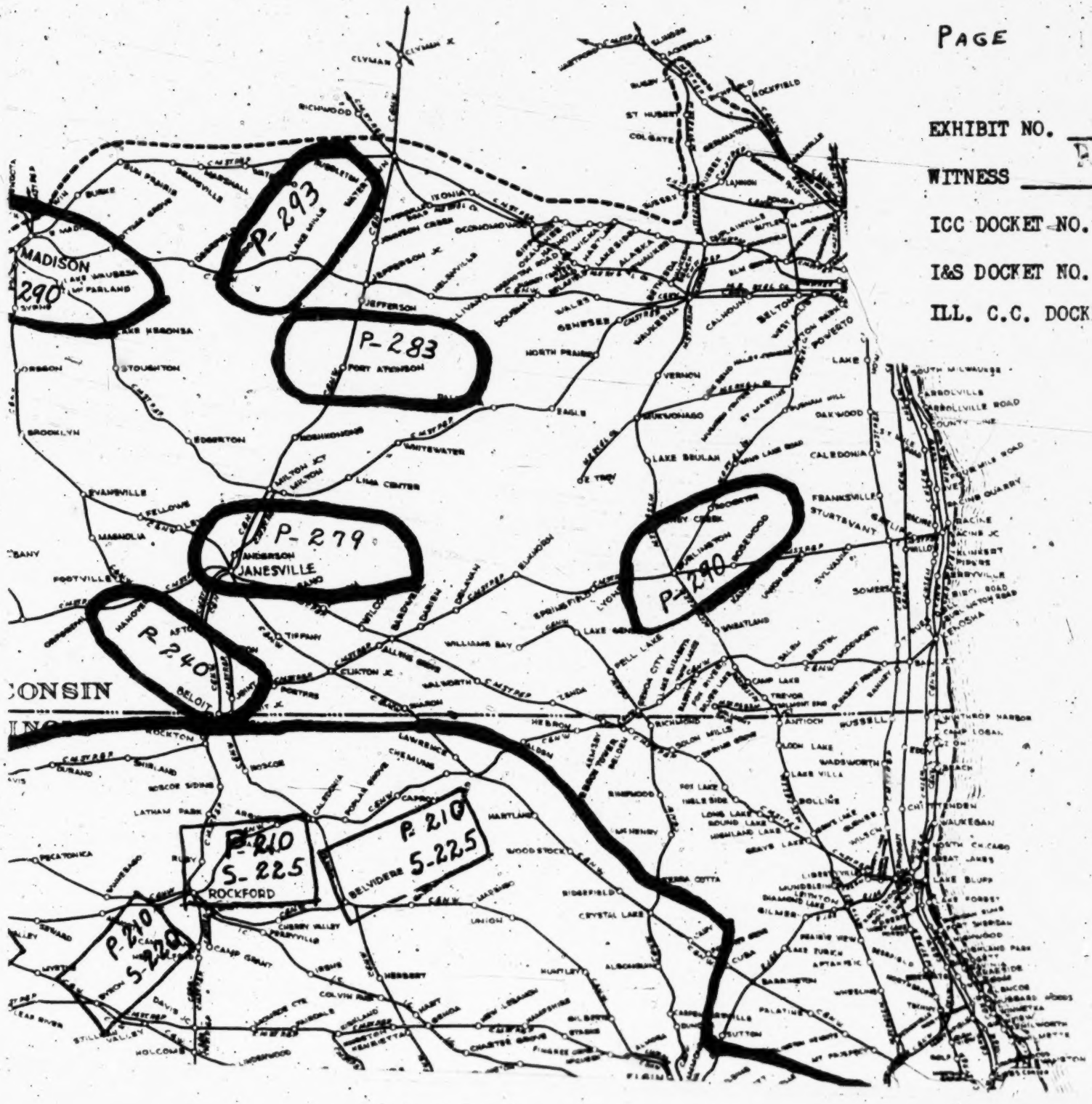
EXHIBIT NO. 2

WITNESS

ICC DOCKET NO. 28881

I&S DOCKET NO. 5139

ILL. C.C. DOCKET NO. 30935



A. Those are rates and the distances, gross rates, yes, sir.

. . . . . .

[fol. 705] Q. Aren't the railroads more interested in the net revenue than they are in a given percentage that a rate is of the H. & H. Scale?

A. Well, I would say so. We have shown some revenue to the representative points, Exhibit 4, that is gross revenues, Mr. Stadell.

Q. That is merely the rate applied to the tonnage moved?

A. Yes.

Q. That merely is gross revenue?

A. Yes.

[fol. 706] Mr. Vesey: Would his answer be the same if you would ask for the gross revenue instead of net revenue? I assume his answer would be the same, but I would like to have it in the record.

Mr. Kaier: Didn't he just say the record showed the gross revenue?

Mr. Hunter: He referred to Section 8 of Exhibit 4.

Mr. Stadell: It shows the tonnage and the rates on the tonnage to seven representative Northern Illinois points.

Mr. Vesey: That is all it shows.

By Mr. Stadell:

Q. During the course of his direct examination Mr. Hamilton stated that the proposed rates from the Indiana groups to the suspended points were in his opinion reasonable rates. Do you agree with that?

A. From the Indiana groups to the representative suspended points?

Q. Yes.

A. The proposed rates?

Q. Yes, the proposed increased rates.

A. We are supporting the proposed increased rates. I won't say they are 100 per cent perfect.

Q. Well, you would say they are reasonable?

A. We think they are reasonable rates.

Q. Would you say that they afford a proper yardstick to use in addition to the Holmes and Hallowell Scale, [fol. 707] possibly a more reliable yardstick to compare the

average level of the present and suspended rates from the Illinois field to the Northern Illinois points involved?

A. I don't understand that question, Mr. Stadell.

Q. Mr. Hamilton said, and you agree with his statement, that the proposed increased rates from the Indiana groups to the representative suspended points and to the representative comparative points are reasonable rates. As I understand you, you agree with that statement, is that right?

A. Yes, sir.

Q. And that being true, the average level of the rates from Indiana would be a proper yardstick to use in determining what would be a lawful level of rates or reasonable level of rates from the Illinois mines to the Northern Illinois points involved; that is another yardstick that could be used in addition to your Holmes and Hallowell Scale, is that right?

A. No, I don't think so. Some of them are according to what rates you are talking about.

Q. I am talking about the average level of the rates from Indiana.

A. I don't have the average level from groups as a whole.

Q. Well, if they are reasonable rates, why shouldn't they be a proper yardstick to be used in determining reasonable rates from Illinois mines to the same points?

A. Well, you have rates from Brazil-Clinton District [fol. 708] that average 71.7 per cent of the H & H Scale. Are those the rates you are talking about?

Q. Well, all right, I will just ask you this. You have agreed with Mr. Hamilton's statement that the proposed increased rates you are proposing from Indiana are reasonable rates. That is what you said, isn't it?

A. Well——

Q. To the suspended points.

A. Well, they are in the category of reasonable rates.

Mr. Stadell: All right, that is all.

Exam. Trezise: If you are through, we will have a few minutes recess.

(A short recess was taken.)

Exam. Trezise: Are you finished, Mr. Stadell?

Mr. Stadell: Well, I have just one more question that I would like to ask, if I may, and that is in connection with

the same point that I have asked several questions about. This question is in connection with your Exhibit No. 11, Mr. Nelson, and is based on your answer to the Examiner about the use of the Holmes and Hallowell Scale.

By Mr. Stadell:

Q. As I understand your answer to him, that the purpose for which you used the Holmes and Hallowell Scale in this and other exhibits that are in the record, was to compare the present and proposed increased rates from the various origin groups to the representative suspended [fol. 709] points with the present rates from those groups to the representative comparative points. In other words, you used the scale to show the relative level of those rates to the suspended and to the comparative points?

A. That is correct.

Q. And that is the purpose of this and the other exhibits that contain those comparisons?

A. The purpose of the exhibits is to show the level, if that is your question.

Q. To the comparative and suspended points?

A. That is right.

Q. And the mere fact the exhibit shows that the average level of the present rates to the suspended points are 62 per cent or some similar percent of the Holmes and Hallowell Scale is not to be taken as an indication or as showing that that indicates that the rates are depressed or unreasonable, in and of themselves?

A. Oh, just the opposite. I think it is an indication that they are depressed, when you compare them with the higher per cent to the representative points.

Q. Just forget the comparisons to the comparative points and confine yourself to the percentages that the rates from Illinois are as shown by your exhibits to the suspended points.

Mr. Biaett: You mean the proposed rates, Mr. Stadell, or the present rates?

[fol. 710] Mr. Stadell: The present rates.

The Witness: Well, the comparison in Exhibit 11 is with the proposed rates to the suspended points.

By Mr. Stadell:

Q. Well, there are other exhibits here. I see that this is a comparison of the suspended rates. There are other exhibits placed in the record here by the railroads which show the percentage that the present rates are, Exhibit No. 3 or 4, I believe, that show what percentage the present rates from the Illinois groups to the Northern Illinois points are of the Holmes and Hallowell Scale, is that correct?

Exam. Trezise: Well, why did you leave Exhibit 11? Exhibit 11 shows that thing that you are talking about.

Mr. Stadell: It shows the per cent of the proposed increased rates.

Exam. Trezise: You mean the representative comparative points in Exhibit 11, it doesn't appear there? That last column is the representative comparative points.

Mr. Stadell: Yes, I know that. I am talking about the present rates from the Illinois groups to the representative suspended Illinois points.

Exam. Trezise: All right.

By Mr. Stadell:

Q. Refer to Mr. Robertson's Exhibit No. 4, Section 3, page 12, which shows the average mileages and the present and suspended rates from the Illinois-Indiana group to Rockford.

[fol. 711] A. That is based on the suspended rates too, the H & H Scale comparison.

Q. Well, all right, take the suspended rates from Southern Illinois to Rockford shown as 65.6 per cent of the Holmes and Hallowell Scale. Does the mere fact standing alone that that rate is 65.6 per cent of the Holmes and Hallowell Scale, do you intend that to indicate that that rate in and of itself is unreasonably low or unlawful?

A. Well, Mr. Stadell, I think the fact it does indicate it is that per cent of the H & H Scale shows that it is certainly not unreasonably high. These are the proposed rates that we are endeavoring to put into effect.

Q. So that you are, contrary to your answer to the Examiner, using the Holmes and Hallowell Scale to measure the intrinsic level of the present and suspended rates from the Illinois mines to the Northern Illinois points by the Holmes and Hallowell Scale?

Exam. Trezise: Now, do you want to answer that in the affirmative? If you do, you will be just diametrically opposite to what you told the Examiner.

Mr. Stadell: That is what I want to find out.

The Witness: I don't understand the difference between the two questions. I said that we used the Holmes and Hallowell Scale as a yardstick. When it indicates it is that per cent of the H & H Scale compared with the higher [fol. 712] per cent of the other rates, that in my opinion is evidence that it is not unreasonably high. I am talking about the proposed rates.

Mr. Stadell: Now, coming back to my question, will you answer my question.

The Witness: I don't know that I understand your question, Mr. Stadell. I have answered it as best *as* I can.

Mr. Stadell: You mean you don't understand the question?

Mr. McElroy: Suppose you repeat it for him, Miss Reporter.

(Question read.)

The Witness: That was the Examiner's question?

Mr. Stadell: That was my question. In other words, without reference to your present rates from Illinois and Indiana to your comparative interstate points, just forgetting all about those for the time being, are you or the railroads in the exhibits that they have presented in these proceedings using the Holmes and Hallowell Scale as a yardstick to measure the intrinsic level or lawfulness of the present and suspended rates from the Illinois groups to the Illinois points involved?

The Witness: We are using it as a yardstick to measure the level of the rates. I have answered you before. We also used it as a yardstick to measure the level of the comparative rates.

Mr. Stadell: You are using it for both purposes then?

The Witness: I don't understand your question.

[fol. 713] Exam. Trezise: Well, Mr. Stadell, my question maybe will help you.

Mr. Nelson, is it your intention to compare a reasonable rate with the relation it bears to the Holmes and Hallowell Scale, or do you merely intend to use the Holmes and Hallowell Scale as a basic yardstick to compare two different sets of rates? You answered that, that the latter is true.

The Witness: That is right.

Mr. Stadell: Well, now, the latter is true——

The Witness: We used it as a yardstick to compare the two sets of rates.

By Mr. Stadell:

Q. And we are to attach no significance to the fact that your exhibits show that the present rates, or the suspended rates from the Illinois groups to Rockford or the other Illinois points happen to be 65 per cent instead of 75 per cent or 85 per cent of the Holmes and Hallowell Scale? That leaves out of consideration your representative comparative points.

A. It certainly would show they are not unreasonably high. It shows the level of the rates.

Q. It just shows they are a certain percentage of the Holmes and Hallowell Scale, is that right?

A. Yes.

Q. Are we to attach any significance to that fact standing alone and as indicating the rates are unreasonably low or unlawful in any other respect?

[fol. 714] A. It shows they are low.

Q. As measured by what, merely the percentage of the Holmes and Hallowell Scale?

A. Measured by the other rates to representative comparative points and using the H & H Scale.

Q. Well, now, your answer then is contrary to what you just stated to the Examiner, is that right?

A. I don't understand that it is.

Q. Do you still stick by your answer to the Examiner?

A. I understood my answer to the Examiner, he wanted to know if we were using the H & H Scale as a yardstick and I told him, yes, that is what we have done.

Q. But you told him you were using it only as a yardstick to compare the present and suspended rates from Illinois and Indiana to Northern Illinois with the present rates from those groups to the representative comparative points in Wisconsin and Eastern Iowa. Isn't that what you told the Examiner?

A. The H & H Scale has been used as a yardstick in this territory for many years.

Q. Will you answer the question. Is that what you told the Examiner?

A. I told him it was used as a yardstick, and I tell you it is used as a yardstick.

Q. Merely to measure the level of the present and suspended rates from Illinois and Indiana to the Northern [fol. 715] Illinois territory as compared with the level of the present rates from Illinois and Indiana to the representative territory, that is, representative comparative territory beyond, that is the only purpose you used it for, isn't it, or that you intend to use it for?

A. We have used it to show the level of the rates, yes, used it as a yardstick to show the level of the rates.

Q. To the suspended territory and the compared territory?

A. Yes.

Q. And that is the only purpose you had in mind in making these comparisons, is that right?

A. Well, that is the part of your question that I don't understand.

Mr. Stadell: All right, that is all.

Exam. Trezise: Well, I don't want to make it confusing and you don't need to answer this unless you want to. The per cent of the Holmes and Hallowell Scale as you show in your exhibit is not in itself sufficient to show that the rate is unreasonably low, but it does show that in comparison with the per cent of the Holmes and Hallowell Scale as shown by the compared rate, the two percentages taken together are sufficient to show that the compared rate is relatively low, and not the Holmes and Hallowell Scale itself, but the compared percentages of the Holmes and Hallowell Scale?

The Witness: The percentages of the Holmes and Hal- [fols. 716-722] lowell Scale as reflected in this exhibit, the proposed rates to the suspended points, indicates that they are not unreasonably high and that they are lower in level than the level of the present rates to the representative comparative points.

. . . . . .

[fol. 723] By Mr Morgan:

Q. Who directed you to prepare this exhibit, Mr. Nelson?

A. Exhibit No. 11?

Q. Yes.

Mr. Biaett: I don't know that that is relevant, Mr. Examiner, who directed him to prepare it or whether he prepared it of his own motion. What difference does it make?

Mr. Vesey: Would you say it was prepared at the direction of some unknown person whose name you don't care to give?

Mr. Biaett: No, but it doesn't make any difference.

Exam. Trezise: All right, we will let him answer the question.

The Witness: The Exhibit No. 11 is really a recapitulation of the information shown in Robertson's Exhibits 3 [fol. 724] and 4 and was submitted in the record to show a composite or a picture of the information that was contained in these two other exhibits, so that it would be easier to make a comparison. I don't know that it makes any particular difference who made the exhibit. I had it made myself.

By Mr. Morgan:

Q. Well, will you answer the question. Who requested you to prepare this exhibit?

A. No one requested me to.

Q. This was done at your own volition?

A. Yes, sir.

Q. You had an inspiration that you wanted to prepare an exhibit and you prepared it and no one knew you were working on it, is that correct?

A. Oh, no.

Mr. Biaett: I object to that line of examination, Mr. Examiner.

Exam. Trezise: Well, he can tell whether any one knew he was working on it.

The Witness: Of course, they knew.

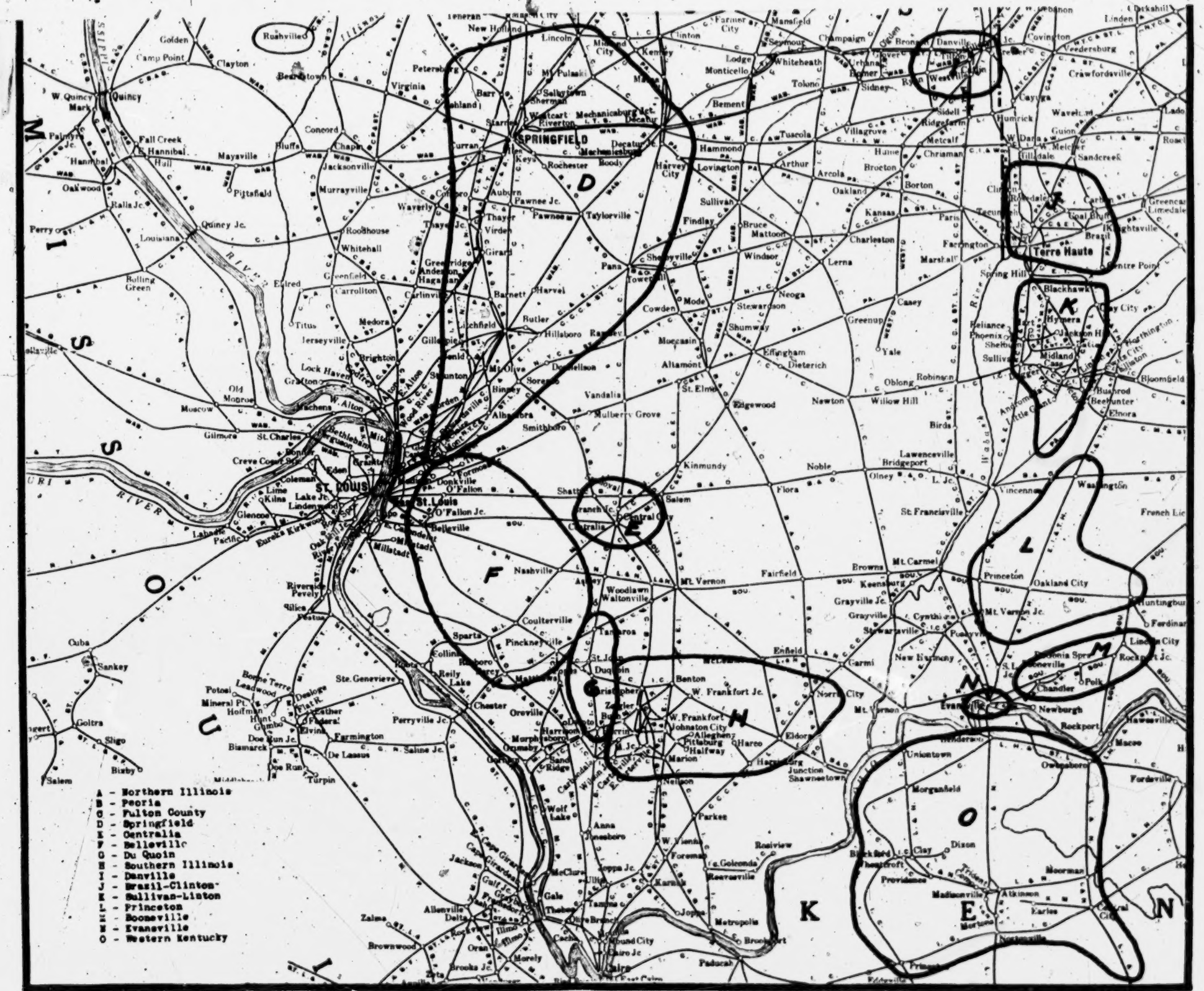
Exam. Trezise: If you want to ask him who knew it, go ahead, if we are going to carry our examination that far.

By Mr. Morgan:

Q. As I understand your prior answer, no one asked you to prepare this exhibit?

A. That is right, but others knew that I did prepare it and had it prepared.

[fol. 725] Q. They knew it after you had it prepared?


A - Northern Illinois
B - Peoria
C - Fulton County
D - Springfield
E - Centralia
F - Belleville
G - Du Quoin
H - Southern Illinois
I - Danville
J - Brazil-Clinton
K - Sullivan-Linton
L - Princeton
M - Boonesville
N - Evansville
O - Western Kentucky
SPRINGFIELD
ST. LOUIS
Terre Haute
Mississippi River
Illinois River
Missouri River

P-225

P-225

P-210
S220

P-200
S205

P-200
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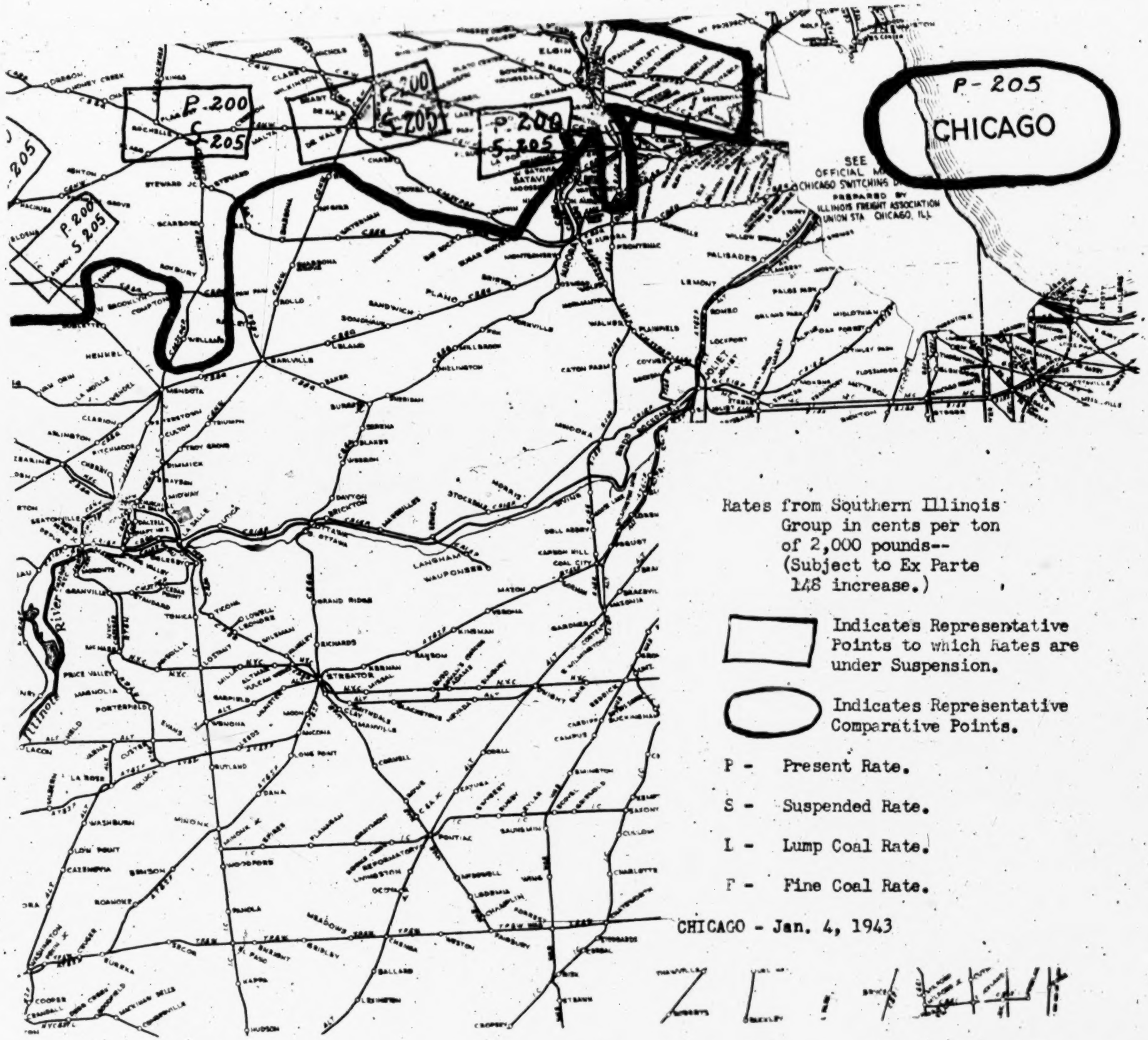
P { INTER STATE } 225
P { INTRA STATE } 220

IOWA

ILLINOIS

IOWA



Rates from Southern Illinois Group in cents per ton of 2,000 pounds-- (Subject to Ex Parte 148 increase.)

Indicates Representative Points to which Rates are under Suspension.

Indicates Representative Comparative Points.

P - Present Rate.

S - Suspended Rate.

L - Lump Coal Rate.

F - Fine Coal Rate.

CHICAGO - Jan. 4, 1943

649b - 673

A. No, they knew it at the time it was being prepared, and afterwards, too.

Q. One further question. You stated that the rates presently in effect in Northern Illinois were unreasonable, in your judgment, and you further stated in reply to a series of questions by a series of people that you used the H & H Scales as a yardstick. Did you by using that scale in this exhibit and your other exhibits intend to use that yardstick for the purpose of indicating that the present rates now in effect in Illinois to the affected points is an unreasonable rate?

Mr. Biaett: In the first place, I don't think he has used that scale or tested the present rates to the suspended points.

The Witness: The comparison is with the suspended rates —or the proposed rates to the suspended points with the present rates to the compared points.

By Mr. Morgan:

Q. Whatever rates are compared, did you intend to imply by that yardstick that the present rates are unreasonable rates?

A. I am showing by this comparison that the present rates are depressed rates and that the proposed rates are not higher than reasonable rates.

Q. That is the proposed rates into Illinois points?

A. Yes.

Q. And then the present existing rates are depressed [fols. 726-755] rates, is that the purpose then for which you have used the comparison against the H & H Scale?

A. That is the purpose of the comparison. That is what it shows.

Q. And that is the reason you have used it and the yardstick to indicate that the present rates are unreasonable rates?

A. That the proposed rates are not unreasonable rates, not too high.

[fol. 756] (Witness excused.)

W. H. KUHLS, was sworn and testified as follows:

Direct examination.

By Mr. Hunter:

Q. Will you state your name, occupation and business address, please.

A. W. H. Kuhls, Coal Traffic Manager, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 788 Union Station, Chicago.

[fol. 757] Q. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company is in the process of reorganization under Section 77 of the Bankruptcy Act, and Henry A. Scandrett, Walter J. Cummings, and George I. Haight are Trustees, is that correct?

A. That is right.

Q. What are your duties as coal traffic manager, Mr. Kuhls?

A. I have charge of all matters relating to coal and coke traffic, freight rates, tariff rules and charges, divisions, claims, commerce, solicitation, and other matters.

Q. How long have you had that position?

A. November 15, 1936. Prior to that time I was chief clerk and clerk in the coal department of the Milwaukee Railroad back to 1924, and about ten years prior to that I was employed in the coal traffic department of the Chicago Burlington & Quincy Railroad.

Q. Have you had any experience in operating matters or cost studies?

A. No, no actual experience. I have heard a lot of testimony on those subjects, but I never made any studies myself.

Q. What will be the nature of your testimony here in this proceeding?

A. Purely rates and traffic.

Exam. Trezise: When you say traffic, what do you mean by traffic?

A. Well, the movements of coal and the loadings per [fol. 758] car and the tonnage.

Exam. Trezise: You didn't mean transportation conditions?

A. No, sir.

Mr. Hunter: That is what we wanted to clarify. Mr. Kuhls is not submitted as an expert in cost accounting or operating matters, but merely as a coal traffic manager.

By Mr. Hunter:

Q. Mr. Kuhls, will you state whether you are testifying here on behalf of the railroad carriers generally and the Chicago, Milwaukee, St. Paul and Pacific Company Trustees specifically?

A. Yes, I am, for the Milwaukee Railroad and respondents generally.

Q. Do the Milwaukee Railroad Trustees serve any of the origin groups involved in this proceeding?

A. Yes, the Brazil-Clinton and the Linton-Sullivan Groups in Indiana.

Q. Do they serve any of the Illinois groups?

A. Not at this time, no.

Q. Do they serve the destination territory?

A. Yes, they serve the destination territory.

Q. Their single haul operates from the Brazil-Clinton and the Linton-Sullivan fields in Indiana to Rockford and certain other destinations in Northern Illinois and Southern Wisconsin?

A. Yes, on the Milwaukee Railroad.

Exam. Trezise: You didn't include the Princeton?

[fol. 759] The Witness: No, sir.

Mr. Hunter: No, the Milwaukee doesn't serve any of the Southern Indiana fields.

The Witness: That is right.

By Mr. Hunter:

Q. Are you familiar with the issues in this proceeding?

A. Yes, sir, I am.

Q. And have you prepared or had prepared under your supervision and direction certain exhibits bearing on the testimony you will present?

A. I have.

Q. Is the information contained in these exhibits true and correct to the best of your knowledge and belief?

A. They are.

Q. Now, will you identify these exhibits which I think have been distributed to everybody in the room.

A. I think so.

Mr. Hunter: The first exhibit I think will be No. 12.

Exam. Trezise: That is correct.

The Witness: That is the 23-page exhibit.

(Respondents' Exhibit No. 12, Witness Kuhls, marked for identification.)

Mr. Cardy: Mr. Hunter, I would request that three additional copies of this exhibit be submitted to the Illinois Commission for use in Docket #1295, which is the Dixon case. [fol. 760] Under the practice before the Commission they have to have three copies in each case if these are heard on a separate or consolidated record, and in order to have a complete record in the Dixon case, I think it is the practice that we should have three copies.

Mr. Hunter: Yes, we will have the reporter mark the exhibits properly for the Illinois proceeding and also for the Interstate Commerce Commission.

Mr. Biaett: The exhibits are not submitted in the Dixon case.

Mr. Hunter: The Milwaukee Railroad is not a part of the Dixon case.

By Mr. Hunter:

Q. Have you identified Exhibit 12?

A. Exhibit 12 contains 23 pages and a title page. Exhibit 13 is one sheet.

(Respondents' Exhibit No. 13, Witness Kuhls, marked for identification.)

Mr. Stadell: The one sheet showing the scales is No. 13?

The Witness: Yes.

Mr. Hunter: Entitled, "Statement showing various scales including Ex Parte 115 increase, but not including Ex Parte 148 increase which have been prescribed by the Interstate Commerce Commission."

The Witness: The two-page exhibit is No. 14.

(Respondents' Exhibit No. 14, Witness Kuhls, marked for identification.)

[fol. 761] By Mr. Hunter:

Q. Will you proceed, Mr. Kuhls, with your explanation of Exhibit No. 12.

A. Exhibit No. 12 consists of 23 pages and an index of contents on the title page. Sheet 1 is a map of all of Iowa, parts of Illinois, Wisconsin, and other adjacent states. As to Iowa, it shows the differential groupings established in the so-called Midland Electric cases, ICC Docket 26558,

232 ICC 5. The figures 70, 50, and 60 are the differentials prescribed by the Interstate Commerce Commission for Southern Illinois over Fulton County to Northern, Eastern sections of the state, Central, Western and Southern respectively. On the subsequent page are shown prescribed differentials between other Illinois groups.

The figures through encircled points in Illinois, Wisconsin and Minnesota are the differences in the suspended or present rates, Fulton-Peoria versus Southern Illinois.

Sheet 2 is taken from Appendix C of the Midland Electric decision in 232 ICC 5, and shows the differentials prescribed by the Commission between the several Illinois groups together with distance differences and the then existing differentials.

Sheets 1 and 2 are introduced in evidence to supply the latest prescription by the Interstate Commerce Commission of rate levels and differentials in this territory and will be referred to throughout my testimony.

[fol. 762] Sheets 3 to 7, inclusive, show maximum reasonable rates on coal prescribed in 232 ICC 3 from Fulton County and Southern Illinois to representative destinations in Iowa; and average distance via short tariff routes; differences in rates and distances, Fulton County under Southern Illinois; the Holmes and Hallowell Scale rates, with percentages; the 26558 scale rates, with percentages; average distances via shortest tariff routes are also shown.

The Holmes and Hallowell Scale was prescribed by the Commission for use in establishing the rates from Lake Superior docks to destinations in Minnesota, North and South Dakota. The purpose of these data is to show the level of rates from the nearest and farthest Illinois origin groups to Iowa, which groups are the largest producing districts in the state of Illinois, and the differential relationship between them.

The present rates from Fulton County range from 86.6 per cent to 100.5 per cent of the Holmes and Hallowell Scale, and from 95.1 per cent to 103.2 per cent of the 26558 scale.

Exam. Trezise: What is this H & H Scale that you say it is related to? Is that the original scale or the scale as increased by some certain amount?

The Witness: That is the maximum scale appearing in 69 ICC 11, with the Ex Parte 15 increase added to it.

Exam. Trezise: What was that Ex Parte 115 increase, as you understand it, that was added?

[fol. 763] The Witness: Three, five, ten, and fifteen cents, depending upon the measure of the rate. The present rates from Southern Illinois are from 70.4 per cent to 83.6 per cent of the H & H Scale, and from 76.1 per cent to 94.1 per cent of the 26558 scale.

Pages 8 to 10, inclusive, show present and suspended rates on Bituminous coal from Fulton County and Southern Illinois groups to representative suspended destinations in Illinois and present rates to comparative destinations in Illinois, Iowa, and Wisconsin, with average distances via short tariff routes, differences in rates and distances Fulton County under Southern Illinois, the H & H Scale, 26558 and 23922 scale rates, together with percentages present and suspended rates are of the scale rates.

By Mr. Hunter:

Q. Mr. Kuhls, will you explain what the 23922 scale is?

A. The 22922 scale was prescribed in Docket No. 23922 for the establishment of rates from Indiana to destinations in Central-Eastern Illinois, reported in 190 ICC 743.

Q. Have you any comment with respect to sheet 9?

A. I am talking now to page 8 to 10, inclusive. The suspended rates on page 9, when measured by the scales shown, are generally lower than the present rates to comparative points on page 10. Fulton County and Southern Illinois are again used for reasons stated in connection with pages 3 to 7.

[fol. 764] A simple average of the percentages shown in Column I, sheet 9, is 76.9 Fulton County and 62.9 per cent Southern Illinois of the H & H Scale. To Iowa, as pointed out, Fulton County ranges from 86.6 to 100.5 per cent and Southern Illinois ranges from 70.4 to 83.6 per cent. Therefore, the average of the Fulton County rates to the suspended destinations is 23.6 per cent less than the rates to Iowa when measured by the Holmes and Hallowell Scale, and the suspended rates from Southern Illinois are 20.7 per cent lower than the rates prescribed to Iowa when measured by the H & H Scale.

Mr. Vesey: Did you say more or lower?

The Witness: Lower. Column L shows the per cent the suspended rates are of Docket 26558 scale, and a simple average of those percentages from Fulton County is 80.9 per cent as compared to 95.1 per cent to 103.2 per cent pre-

scribed by the Commission to Iowa. The average of the suspended rates in Column I from Southern Illinois is 68.8 per cent as compared with 76.1 to 94.1 per cent of the rates prescribed to Iowa destinations. Therefore, the Fulton County rates suspended in this proceeding are 22.2 per cent lower than the rates prescribed to Iowa, and the suspended rates from Southern Illinois are 25.3 per cent lower than the rates prescribed to Iowa.

Mr. Stadell: You say they are that per cent lower. You mean that they are that number of percentage points lower as measured by the scale?

[fol. 765] The Witness: Measured by the particular scale.

Mr. Stadell: But they are not that particular percentage lower?

Mr. Hunter: In other words, that is the difference.

Mr. Stadell: That is the difference as measured by the scale?

Mr. Hunter: That is right.

Mr. Stadell: In percentage points.

Exam. Trezise: And when you contrast these rates with the rates to Iowa, of course, you are using the same method of distances, that is, the short tariff route?

The Witness: That is right. The rates prescribed by the Commission applied via the shortest tariff routes, but the decision also showed the average distance via the short tariff routes. So we are comparing like with like. We are using the short tariff to Iowa and the short tariff to the suspended destinations.

Column O shows the percentage relationship of the suspended rates from Fulton County and Southern Illinois to the 23922 scale, Fulton County being on an average 90.8 per cent and Southern Illinois being 84.4 per cent.

Sheet 10 shows the present rates on Bituminous coal from Fulton County and Southern Illinois to certain destinations in Wisconsin and Iowa, also Chicago, Illinois, with average distance via short tariff routes, the difference or [fol. 766] differentials between Fulton County and Southern Illinois, the H & H Scale rates with percentages in that scale, 26558 scale rates with percentages, and the 23922 scale with percentages.

A simple average of the present rates from Fulton County to the comparative destinations is 82.1 per cent as compared to 76.9 per cent to the suspended destinations. The average of the present rates from Southern Illinois is

87.5 per cent of the H & H Scale as compared to 62.9 per cent to the suspended destinations. The present rates from Fulton County when measured by the 26558 scale shown under Column H averages 87.3 per cent as compared to 80.9 per cent to the suspended destinations. The present rates from Southern Illinois to the comparative destinations is 78.8 per cent of the 26558 scale as compared to 68.8 per cent to the suspended destinations, or exactly 10 per cent higher to the comparative destinations and to the suspended destinations.

By Mr. Hays:

Q. Mr. Exhibit, before you leave page 10, will you summarize very briefly what you have shown in these preceding pages? In other words, no matter what scale you use as a purpose of comparison, what result do you reach?

A. The result is the same, whether you use H & H, 26558 or 23922. They all show that the suspended rates to Illinois destinations are lower, substantially lower than the present rates to the comparative destinations.

[fol. 767] In Column J are shown the per cents the present rates are of the 23922 scale. The average from Fulton County is 96.9 as compared to 90.8 to the suspended destinations; and Southern Illinois averages 90.5 per cent to comparative points, as contrasted to 84.4 per cent to the suspended destinations. Here the difference in the levels is 6.1 per cent, using the 23922 as a measuring stick.

Sheet No. 11 shows the proposed or suspended rates from the Springfield, Illinois and the Brazil-Clinton, Indiana groups to the representative suspended destinations in Northern Illinois, with the average mileage via short tariff routes from these groups, and the average distances and rates from the Brazil-Clinton group under or over Springfield. The authority for the mileages shown on this sheet is Exhibit No. 3. But since it was prepared certain corrections have been made in Robertson's Exhibit No. 3-A, and I would like to ask your indulgence in making a few corrections on sheet 11 to bring it in conformity with Exhibit 3-A.

Q. The first corrections, I take it, are under the heading of mileage under Column C?

A. Yes, they are all mileage. Under Column C, line 11, in place of 254.9 it should read 244.2. Still under Column

C, line 25, instead of 232.4 as an average it should be 231.5. In Column F, line 20, Rochelle, where 261 is shown, substitute 251.3. Line 25, the average is shown as 254.7; it should be 255.9.

[fol. 768] Now, the only change that is required as the result of these two corrections is on line 25, column H. The mileage difference Brazil-Clinton over Springfield instead of being 22.3 is 24.4.

It will be noted in columns E, F, G, I have shown more than one rate and more than one mileage for certain of the destinations. In explanation thereof I will say that where a single rate is not applicable from all mines in the origin group, the average group distance is not used, but in its stead the average for the individual rates. For example, line 3, Byron, I show no rate in column E, but I show 252.8 in column F as being the average from the group. Then on line 4, a rate of $1.90 is shown in column E which applies for an average distance of 234.4 miles, that being as explained in column G the average of mines on the C.M.St.P.&P., and likewise, the averages for other rates, were it not uniform, are shown.

For a good many years past Brazil-Clinton and Springfield, Illinois groups have generally had a parity of rates to this destination territory. This was broken up by action of the Illinois Commerce Commission.

Q. Mr. Kuhls, before you get to that, did Brazil-Clinton ever have lower rates than Springfield?

A. Yes. For example, turning to Exhibit No. 4, page 8 of section 1, it is shown that on January 1, 1910, the rate from Springfield to Rockford, Illinois was 95.3 cents; from [fol. 769] Brazil-Clinton, Indiana 90 cents. On December 1, 1910 Springfield was increased to 105.3, Brazil-Clinton increased to $1.00, and so on. It wasn't until April 1st, 1913 that Springfield was placed on the Brazil-Clinton basis.

Q. And that relationship existed from 1913 until when?

A. Until the parity was disrupted by order of the Illinois Commerce Commission dated March 7, 1928, by Dockets 13568 and 13569. Speaking particularly to Rockford, the Milwaukee Railroad subsequent to the reduction in rates by the Illinois Commerce Commission restored the relationship of its Brazil-Clinton mines with Springfield, following a decision of the United States Supreme Court in

294 United States 499. In that case the court pointed out——

Mr. Stadell: Now, I object to what the court pointed out. The court's decision will speak for itself.

Mr. Hunter: That is correct.

By Mr. Hunter:

Q. Now, will you state, Mr. Kuhls, whether the Milwaukee Railroad takes the position that the rates shall be the same from the Brazil-Clinton field as from the Springfield, Illinois Group?

Mr. Stadell: To where?

Mr. Hunter: To the destinations involved in this proceeding.

The Witness: I think sheet No. 11 proves that conclusively. There are some spots in this adjustment which [fol. 770] are unfavorable to Brazil-Clinton as against Springfield. For instance, line 2, Belvidere, the Brazil-Clinton mileage is 18.8 miles less than the average from the Springfield, but our rate is 17 cents a ton higher. Line 18, Geneva, Brazil-Clinton mileage is 15.4 miles less than Springfield, but the Brazil-Clinton rate is 14 cents higher.

Now, we are not contending that each of these destinations should be picked out and the rates and distances gone over with a fine tooth comb. We are willing to support this general proposition of the railroads to all these destinations even though it is unfavorable in some respects to us.

Now, the average of the Brazil-Clinton mileage, line 25, is 24.4 miles greater than from Springfield, and the Brazil-Clinton rates average 13.4 cents per ton higher than Springfield.

If you will refer to page 2, you will find that to destinations in Iowa the Commission prescribed a differential of 10 cents DuQuoin under Southern Illinois for a distance of 32 miles.

On line 11 of sheet 2 it is shown that the Commission prescribed a difference of 15 cents Belleville under Southern Illinois for 51 miles.

There are a number of others. It won't be necessary to read them all into the record. They indicate that this average rate of Brazil-Clinton over Springfield is too high con- [fol. 771] sidering the difference in the distance is only 24.4 miles.

Exam. Trézise: Well, is there anything the matter with these differentials in Indiana? Is that what you are driving at, there may be something the matter with those differentials between the groups?

The Witness: No, your Honor, I am not driving at it, but I am afraid our friends will drive at it.

Exam. Trezise: You are just fortifying yourself against what you think might come?

The Witness: That is correct.

Exam. Trezise: To show that they are right or to show that they are wrong, which?

The Witness: To show they are right as a general proposition.

Exam. Trezise: As they are?

The Witness: As we propose them.

Exam. Trezise: And that they compare reasonably with the type of differentials that the Commission fixed to Iowa? You wouldn't say that, would you?

The Witness: No. The Brazil-Clinton rates could be a little lower than they are from Springfield, but we are not asking that at this hearing.

Exam. Trezise: I meant the rate itself, not the differential.

The Witness: Well, of course, the differential would be [fol. 772] reflected in the measure of the rates.

Exam. Trezise: All right.

By Mr. Hunter:

Q. Mr. Kuhls, however, the Milwaukee railroad trustees contend, as I understand it, that the rate prescribed by the Commission from the Brazil-Clinton Field should be no higher than the rate prescribed from the Springfield group, is that right?

A. That is right, and we feel it couldn't be any different on the record. The average distance, for example, from Springfield to Rockford is 260.7 miles. Now, the Milwaukee average, that is, mines on the Milwaukee, is 237.1 miles, or 23.6 miles less. Now, surely a higher rate couldn't be justified.

Q. Did you mention the average of the mileage from all of the mines in the Brazil-Clinton?

A. Even taking the average of all the mines, 254.3, it is 6.4 miles less than the average from Springfield.

Exam. Trezise: Well, would you stop when you get this proper relationship as you indicate there might be reached when you compare the Springfield Group with the Brazil-Clinton Group? How about the other groups?

The Witness: Well, I go into that on sheet 12.

Exam. Trezise: Well, I was just hoping that you were going to say something the same about those too. So we will wait with anticipation.

The Witness: All right. Sheet 12 shows the rate and [fol. 773] mileage differentials between Brazil-Clinton and Linton-Sullivan, Indiana groups, to the representative suspended destination. It will be noted that the differential in the last column varies. In some cases it is 10, in other cases it is 5, and in some cases both 5 and 10. That is the result of the origin lines carrying different rates, as in the case of Byron, Forreston, Freeport and Rockford. The differential between mines on the Milwaukee railroad and the Brazil-Clinton Group and Linton-Sullivan Group is 10 cents, and we feel that either 5 or 10 could be justified by relying on the differenfials prescribed in the Midland case as shown on sheet 2. Either one is satisfactory, but so far as our line is concerned, why, 10 cents is——

By Mr. Hunter:

Q. Mr. Kuhls, while we are on that point, the Milwaukee railroad serves mines both in the Brazil-Clinton and Linton-Sullivan Groups, is that correct?

A. That is right.

Q. Can you tell us the percentage of the total coal traffic handled by the Milwaukee railroad trustees from these groups as compared with the total to the destination territory involved in this proceeding?

A. Well, there is no record kept of these destinations, with the exception of Rockford. In 1942 the Brazil-Clinton and Linton-Sullivan Groups shipped—well, take the groups separately—the Brazil-Clinton Group shipped 136,999 tons [fol. 774] to Rockford, of which 132,589 tons originated on the Milwaukee and were carried to Rockford. The tonnage originated and carried by the Milwaukee represented 95.4 per cent of the total from the Brazil-Clinton Group.

Q. What was the percentage about 1933 or thereabouts, do you know?

A. Well, in the Supreme Court case the Court said about 99 per cent. Now, from the Linton-Sullivan Group the total

coal delivered at Rockford which originated in the Linton-Sullivan Field amounted to 44,715 tons. The Milwaukee originated and carried 35,127 tons or 78.5 per cent of the total.

Mr. Wood: May I ask, are these figures in the exhibit anywhere? It is hard to follow the thought.

The Witness: The average distance difference between the Brazil-Clinton and the Linton-Sullivan Groups to the representative suspended destinations is 38.4 miles, and as I stated, a differential of either 5 or 10 cents could be justified by using the sheet 2 as a guide.

For example, on sheet 2, line 2, it is shown that the Commission prescribed for Fulton County under Northern Illinois 5 cents for a distance difference of 30 miles, which would justify the 5 cent differential between the two Indiana groups.

Then on line 13 it is shown that the Commission prescribed a differential of 10 cents DuQuoin under Southern Illinois for a distance difference of 32 miles, which would [fol. 775] justify a 5 cent differential between the two Indiana groups. So either one seems to be proper. Of course, we prefer it 10 cents.

By Mr. Hunter:

Q. Those differentials were prescribed by the Commission in the Midland Electric case, is that right?

A. And in effect today, yes.

Exam. Trezise: Now, you are not going to tell us what you think the relation ought to be between the Linton-Sullivan and Princeton-Ayrshire and Boonville Group. That is beyond your testimony?

The Witness: Yes. We don't serve those groups.

Exam. Trezise: Yes; you are not going to tell us that 3 cents down there ought to be 10 cents.

The Witness: No.

Exam. Trezise: Go ahead.

The Witness: Sheet 13 is a statement showing a number of commodities rated class D and class E in western classification, on which column ratings have been prescribed by the Interstate Commerce Commission. Some are so-called low rated commodities, being fertilizers or fertilizer fillers, and other commodities much more valuable than bituminous coal.

I think it represents kind of a cross section between low rated commodities that sell for about the same prices as coal and commodities that sell for a little higher price than coal. Only two of these commodities have been rated below 15 per cent of first class, and as will be shown later, the [fol. 776] suspended rates from Illinois, Indiana, western Kentucky to Northern Illinois are less than 12 per cent of first class, and a substantial number below 11 per cent.

Mr. Wood: I would like to ask the witness, have all these items from 2 to 31 come out of the Indiana mines on any railroad?

The Witness: Well, line No. 1 does, coke.

By Mr. Hunter:

Q. Mr. Kuhls, what is the purpose of pages 13 and 14, please?

A. Well, 13 shows the level of commodity rates which have been taken out of the classification and given a column rating and it is designed to be used in connection with subsequent sheets which show the level of the suspended rates.

Q. These are merely further comparisons, are they not, pages 13 and 14; you have compared the suspended rates with various coal scales and now you are comparing them with the column ratings on various commodities?

A. Yes. We have shown that the suspended rates are lower than the comparative rates or competitive rates, measured by the H. & H. scale, 23922 and 26558, and then we want to go still further and show there are other measuring sticks demonstrating the suspended rates are low.

Mr. Wilkinson: May I ask you a question, Mr. Kuhls, so I can follow your exhibit. Classification rating D, where you show coke is 16½ per cent, in classification rating D, [fol. 777] does that mean coke moves on a first class scale, or what would be the rate for the coke?

A. With our new through commodity rates on coke, they would be subject to class 3 rates.

Mr. Wilkinson: Is that the same as the first class rates?

By Mr. Hunter:

Q. Column C shows the percentage, does it not, Mr. Kuhls?

A. Classification D is 22½ per cent of first class.

Q. Is that correct? Column D would appear to be 16½ per cent.

A. Mr. Hunter, these are the commodity rates prescribed in 194 I. C. C. 640 for application on coke. If there were no through rates based on 16½ per cent of first class then the coke would move on class D, which is 22½ per cent.

Mr. Hunter: Oh, I see.

The Witness: But the Commission has taken Coke and these other commodities out of the classification and given them commodity rates based on these column ratings.

Mr. Hunter: I see.

Mr. Wilkinson: Now, if Coal didn't have any rates published for it and you were going to ship a car of coal and there was no specific rate on coal, where would it fall?

A. Class D, 22½ per cent.

Mr. Wilkinson: It would be 22½ per cent of first class?

The Witness: Yes.

[fol. 778] Mr. Wilkinson: Then when you come over here, you have got to take 22½ per cent of this first class rate to get the equivalent of this proposed coal rate, don't you, if you are going to compare it with coke?

The Witness: Are you talking now about——

Mr. Wilkinson: I am talking about page 14 of your exhibit now.

The Witness: Let us take the Springfield group to Amboy, line 1.

Mr. Wilkinson: If coke was moving there, it would take 16½ per cent of 22½ per cent of this first class rate?

The Witness: No, it would take a specific commodity rate based on 16½ per cent of first class.

Mr. Wilkinson: I thought it took 16½ per cent of the class D rate.

The Witness: No. You recall I. & S. Docket 3511.

Mr. Wilkinson: I don't know anything but coal rates.

The Witness: The Commission prescribed rates on coke from Ashland, Kentucky and southern Ohio ovens. They prescribed a distance scale which they said equalled 16½ per cent of first class.

Exam. Trezise: Will you just explain on page 14 under first class the 1460.

The Witness: 1460 is cents per ton arrived at by multiplying the hundredweight rate by 20.

[fol. 779] By Mr. Hunter:

Q. For example, the rate from Springfield, Illinois to Amboy, Illinois, would be 73 cents a hundred pounds, the first class rate?

A. That is right.

Q. Now, Mr. Kuhls, Springfield, Illinois, is located where with respect to the Springfield group?

A. Well, at the present time it is practically in the extreme north end of the Springfield group, mines further north being abandoned, as I understand it. The Springfield group extends down to Mt. Olive and Staunton, which are about 30 miles east of St. Louis. So if you took a central point in the Springfield group or took another point in the southern end of the Springfield group your first class rate would be much higher and your proposed coal rate accordingly much lower than 12 per cent of first class.

Q. For example, when you go over to the Clinton group, to Amboy you have a first class rate, from Terre Haute to Amboy, of 86 cents, making the first class ton rate $17.20, is that correct?

A. That is right.

Q. And where is Terre Haute in the Clinton group?

A. Terre Haute is the last point, the most southerly point in the Brazil-Clinton group, the furthest distant point.

Q. Now, with respect to the Clinton group, you took a group farther away from Amboy, that is, a more distant [fol. 780] point in the group, and with respect to the Springfield group you took the nearest point to Amboy?

A. It is not the purpose of sheet 14 to demonstrate the relationship between origin groups. It is for the purpose of showing the level when measured by the class rates of the entire suspended adjustment. No, it wouldn't be fair to base the Springfield group on the Springfield class rates and the Brazil-Clinton rates, on the Terre Haute class rates.

Q. No; the purpose is merely to give an idea of the measure of the rates based on class rates?

A. That is right. Page 15 shows the same information as contained on page 14 to the representative compared destinations. The showing here is opposite——

Q. Mr. Kuhls, will you pardon an interruption. In order to clarify the matter for someone, I noticed a notation at the bottom, coal rates, same as Exhibit No. blank. Should there be some insertion?

A. No 4 should be inserted there.

Q. Was the same to be placed on page 14? You have a notation on the bottom there, coal rates, the same as Exhibit No. 4?

A. That is right.

Q. In other words, insert Exhibit No. 4 in the blank space on pages 14 and 15.

A. Yes. I am sorry I slipped up on numbering those in time. Then on page 8 you will find that I omitted the [fol. 781] authority there too. The authority for the distances, this is on page 8, is taken from Exhibit No. 3.

Q. That is in the top line?

A. Yes, And the authority for the rates is taken from Exhibit No. 4.

The showing on sheet 15 as to the representative comparative destinations is quite opposite to the showing as to the suspended rates, in that the present rates, to comparative points are generally higher than 12 per cent, if Chicago is omitted.

Mr. Bather: Mr. Kuhls, in order that I may understand this, how did you arrive at your first class rates shown on pages 14 and 15? I think you said you took 20, multiplied it by 20?

The Witness: I took the class rate per hundredweight and multiplied it by 20 to get the class rate on a ton.

Mr. Bather: Oh, I get your point. In other words, you took the rate per hundredweight and multiplied it by 20 to get your rate per ton.

The Witness: Sheet 16 is a similar showing for rates from the Inner Crescent, using Ferndale, West Virginia, as representatives.

By Mr. Hunter:

Q. Mr. Kuhls, just go back to sheet 15. You said that the rates, are generally higher to the comparative points than to the suspended points. Have you figures, have you counted [fol. 782] the number of points?

A. Well, I said if Chicago was omitted. I would have to deduct Chicago here. Out of a total of 152, 77 are lower than 12 per cent.

Mr. Vesey: That is based on page 14?

The Witness: Page 15.

Mr. Stadell: Where is that from and to, Mr. Kuhls?

The Witness: All the rates shown on page 15.

Mr. Stadell: From all the groups to all of the points there?

The Witness: Take all of the percentages there, as I count them, there are 152 percentages shown on sheet 15, and omitting Chicago there are 57—I said 77—I should have said only 57 are lower than 12 per cent.

Mr. Stadell: To the comparative points?

The Witness: Yes, sir.

Mr. Vesey: Did you give us the same figure on the suspended points?

The Witness: I said with few exceptions. On the suspended points, with few exceptions, the rates are lower than 12 per cent.

Mr. Vesey: Would your counsel object if I attempted to clear up what I think is an error on page 14?

Mr. Hunter: I will try to clarify this 15.

By Mr. Hunter:

Q. I think you indicated there were 152 des-inations, [fol. 783] and is it correct that 85 are higher than 12 per cent and 67 are lower than 12 per cent? Is that what you said? I was trying to follow you, but there was quite a bit of talking.

A. Well, it would be the difference. I gave the number lower. It would be the difference, which would be higher. I gave 57 lower, which would leave 95 higher than 12 per cent.

Mr. Bather: 95 what?

The Witness: Percentages.

Mr. Vesey: May I ask a question right there, Mr. Hunter?

Mr. Hunter: Yes.

By Mr. Vesey:

Q. Did you check the figures shown on page 14 of Exhibit 12 to determine if those figures are correct?

A. On sheet 14?

Q. That is right.

A. Well, you mean the rates and percentages that I show here?

Q. That is right.

A. Yes, they are correct.

Q. Did you check them back to ascertain whether they are correct?

A. Yes.

Q. Don't you know, as a matter of fact, taking your Fulton County Group rate, for example, what you have shown as your proposed coal rate is in fact your present coal rate and not the proposed?

A. No, I didn't know that.

[fol. 784] Q. Don't you know that your proposed rate is $1.55, for example, to Amboy, as against $1.50? For example, to Rockford it is $1.50, your present rate, and $1.65 as a proposed rate?

A. This sheet 14 shows the caption, proposed rates.

Q. I know it does, but did you check it back to find out whether these figures are correct or not?

A. Well, I still think that the proposed rate here, take proposed rate Springfield to Rockford, $1.95, well, certainly that is the proposed rate.

Exam. Trezise: The present rate is $1.80, isn't it?

The Witness: Yes. Are you looking at a rate history which includes the Ex Parte 148 increase?

Mr. Vesey: No. I am just looking at this, as I understand your proposed rates to be. Or are these the proposed rates submitted by the Milwaukee Railroad to the carriers as a proper rate from Fulton County, let us say, to the destinations shown?

The Witness: These are presumed to be the suspended rates.

Mr. Hunter: Will you look at Mr. Robertson's exhibit, while we are at it, Mr. Kuhls.

The Witness: I don't have to. I see the rates here.

Mr. McElroy: Can't we go along with the testimony, and if there are any corrections to be made on the exhibit, we can make them later.

Mr. Hunter: Yes, we will check them. All the other groups [fol. 785] are apparently all right.

Exam. Trezise: As far as Rockford is concerned, that is certainly correct there.

Mr. Bather: Is your differential from Fulton County 75 cents under your Southern Illinois group to Rockford today or under the proposal?

The Witness: No, sir.

Mr. Bather: That is what you show on your exhibit.

The Witness: There does seem to be some question about the Fulton County rates.

Mr. Vesey: Well then, so long as that question exists, you can't make a comparison between pages 14 and 15, can you?

The Witness: Not from Fulton County, to the extent the rates are incorrect.

Mr. Hunter: Will you check that, Mr. Kuhls?

The Witness: Yes, I will check that.

Mr. Hunter: And we will explain that in the morning.

Mr. Vesey: Surely.

Exam. Trezise: The Rockford rate from the Fulton-Peoria group proposed is wrong. It says $1.50. Why, the proposed rate is $1.65.

Mr. Vesey: That is why I was wondering, Mr. Examiner, and the reason for the question.

Exam. Trezise: This is wrong on this sheet.

Mr. Vesey: Yes, or unless the Milwaukee has a different [fol. 786] proposal or did make a different proposal to the carriers in the group, in anticipation of new rates, and I wanted to find out which of the three it was.

Exam. Trezise: That must be a clerical error. Mr. Kuhls will look that up and straighten it out, and thank you, Mr. Vesey, for your attention.

Mr. Vesey: I don't think that it is a clerical error. I think it might have some soundness in fact.

Exam. Trezise: We will adjourn to ten o'clock in the morning.

(Witness excused.)

(At 4:45 o'clock P. M. June 15, 1943, adjourned to 10:00 o'clock A. M. June 16, 1943.)

[fol. 787]

Morrison Hotel,
Chicago, Illinois,
June 16, 1943.

The hearing was resumed pursuant to adjournment at 10:00 o'clock a. m.

Before R. N. Trezise, Examiner. F. B. McElroy, Illinois Commerce Commission

APPEARANCES:

As before.

PROCEEDINGS

Exam. Trezise: Whenever you are ready, gentlemen, we will proceed.

Mr. Hunter: Mr. Kuhls.

W. H. KUHLS resumed:

Direct examination (continued).

By Mr. Hunter:

Q. I think, Mr. Kuhls, when we left off last evening you were explaining your Exhibit No. 12.

A. I believe I had gotten through sheet 17, when my attention was then called to apparent errors in the Fulton County group rates on sheet 14. If I may at this time, Mr. Examiner, I would like, for the record, to call off the correct rates, and the percentages of first class represented by the correct rates.

Exam. Trezise: Yes.

The Witness: All of the following corrections will be made in the Fulton County group column, which is the last [fol. 788] column on the sheet. The rates shown are the present rates, with the exception of the rate to Sterling. The correct proposed or suspended rates are as follows: in line 1, $1.55 instead of $1.50; per cent, 11.7. Line 2, Belvidere, $1.65 instead of $1.50; per cent, 10.9.

By Mr. Binkley:

Q. 10.9?

A. Yes, sir. Line 3, Byron, $1.60 instead of $1.64; per cent, 11.0. Line 4, Dekalb, $1.55 instead of $1.50; per cent,

11.1. Line 5, Dixon $1.55 instead of $1.50; per cent, 11.7. Line 6, Forreston, $1.60 instead of $1.50; per cent, 11.4. Line 7, Freeport, $1.65 instead of $1.50; per cent, 11.3. Line 8, Geneva, $1.55 instead of $1.65; per cent, 10.5. Polo, Line 9, $1.60 instead of $1.64; per cent, 11.8. Line 10, Rochelle, $1.55 instead of $1.50; 11.4 per cent; line 11, Rockford, $1.65 instead of $1.50; per cent, 11.1.

Q. 11—what?

A. 11.1. No change in line 12.

I found one error in the Northern Illinois rates. Line 4, DeKalb, the suspended rate is $1.40 instead of $1.55 and the per cent is 13.2 instead of 14.6.

Sheet 18 shows rates on bituminous coal between points in Ohio prescribed by the Interstate Commerce Commission in the 13th Section proceeding, 192 I. C. C. 413. The average distances by short tariff routes are shown, the Holmes and Hallowell Scale for the distances, the rates under Column [fol. 789] A which the Interstate Commerce Commission required to be observed as a minimum, with corresponding percentages of the Holmes and Hallowell Scale; and in Column B, the rates in effect by order of the Ohio Commission and the percentages of those rates. In the last column are shown the tons of coal moved during the year 1931. I would like to direct your attention to the fact that the suspended rates in Southern Illinois to the 12 representative Illinois destinations average 62.9 per cent of the Holmes and Hallowell Scale, which can be compared with the level of the rates prescribed by the Interstate Commission for application within Ohio, as a minimum.

Sheet 20 shows the production of bituminous coal for the United States as a whole and for the states of Illinois and Indiana for the years 1917 to 1941, the percentage the Illinois production is of the total United States production and the per cent the Indiana production is of the country as a whole. Also, in Column G, the per cent the Illinois production is of the Indiana production. Both Illinois and Indiana percentage of the country as a whole was less in 1941 than in 1940, notwithstanding both states had an increase in tons, 1941 over 1940.

The Indiana production varied during these years from just under 4 per cent to a maximum of 5.30 of the United States production, the high figure being in 1918. The purpose of this sheet is to show that the Indiana production is

[fol. 790] small as compared to the country as a whole and is only a small part of the Illinois production.

Sheets 21, 22 and 23 show manufacturing industries located at Freeport and Rockford, Illinois, which are suspended destinations, and other points in Illinois; also Iowa and Wisconsin, which appear in this record as comparative destinations. I have shown the name of the firm; the commodity manufactured and the origin of the coal used, the purpose being to show that industries located at the comparative points compete with industries located at the suspended destinations in the manufacture of the same or comparable commodities. I have omitted coal, lumber and building material dealers, greenhouses, electric and gas utilities and laundries, also manufacturing industries which buy their coal from local dealers, the origin of that coal could not be determined, so the list is not complete. The commodities manufactured by industries at Freeport and Rockford which are also manufactured at the comparative destinations are hardware, batteries, machines, dairy products, boats, plating articles, farm implements, auto parts, knit goods, farm machinery, furniture, farm equipment, leather goods, machinery, forgings, milk products and structural steel. Those are the commodities appearing in the list of the firms on these three sheets, but as stated, all manufacturing industries are not included because of their purchases through local dealers and not direct by carload.

[fol. 791] (Respondents' Exhibit 12, Witness Kuhls, received in evidence.)

The Witness: Exhibit 13 shows three distance scales of rates prescribed by the Interstate Commerce Commission in the cases cited, which have been referred to in these proceedings. The application of the Holmes and Hallowell Scale is well known. The scale prescribed in Docket 23130 and the corresponding Illinois Commerce Commission case, 19591, is the minimum scale which the Commission required to be observed in its order in 182 I. C. C. 537.

The 23922 scale is used in the publication of rates from Indiana to Eastern-Central Illinois, and in its decision the Commission said that its findings were to align these rates with the rates from competing mines, rather than fixing maximum reasonable rates for the services ren-

dered. The scale was made five cents per ton higher than the minimum scale in Illinois, and in my opinion is on a very low basis.

(Respondents' Exhibit 13, Witness Kuhls, received in evidence.)

By Exam. Trezise:

Q. Your Holmes and Hallowell scale you have there is a scale that has been increased in accordance with Ex Parte 115 full increases that you mentioned yesterday, rather than increasing each one of the rates under the Holmes and Hallowell Scale as in 69 I. C. C. 11, seven and a half cents?

A. Yes, and that is the reason it is here used to measure [fol. 792] local rates, whereas the Holmes and Hallowell rates are proportional rates.

Q. There is no application of the Holmes and Hallowell scale on any traffic whatever, on the basis of the scale that you have here, is there?

A. No, sir.

By Mr. Bather:

Q. Mr. Kuhls, in view of the ruling of Examiner McElroy, shouldn't the heading "31295—Dixon Chamber of Commerce versus C. & N. W." be stricken?

A. Yes, it should.

Q. From Exhibit 13 and also Exhibit 14. I should have said Docket, Illinois Commerce Commission's No. 31295.

A. Yes.

Mr. Cardy: Of course, my understanding was, Mr. Examiner, that all testimony in the consolidated cases might properly be received in evidence.

Mr. Bather: That is right, except that Mr. Kuhls is not testifying in the Dixon case.

Mr. Cardy: Well, he is testifying in the I. & S. case before the Illinois Commission, isn't he?

Mr. Bather: That is right, he is.

Mr. Cardy: If you start separating these exhibits and the testimony, we are going to run into difficulty. Either follow the original ruling—of course, necessarily we will have to have the Dixon case set before the Illinois Com- [fol. 793] mission for final completion of testimony, and it

is a question of whether we ought to follow the original ruling and let that go in. I think that would stand anyway, regardless of what the witness would say.

The Witness: Exhibit 14 shows the rates from the original origin points not assigned to any particular group; also rates from Bloomington and Fulton County to the representative suspended destinations in Illinois and compares those suspended rates with the 19591 or 23130 scale, the former being the Illinois Commission number and the latter the Interstate docket number, and the 23922 scale.

Page 2 of Exhibit 14 shows, in the bottom block, a recapitulation of these percentages, and referring to the last column of the lower block, it will be noted that the average from the so-called short origins ranges from 86.3 per cent from Rushville to 110.3 per cent from Atkinson of the 23922 scale, the others being a little less than 90, or in the low 90's.

By Exam. Trezise:

Q. And, Mr. Kuhls, when you say these origin points are not assigned to any group, you mean that these are short-haul rates, are not group origins?

A. That is correct. I think there has been some testimony in an attempt to show that these short-haul rates were high, and this Exhibit 14 appears to answer that contention. They are not high rates as measured by the 23922 scale.

(Respondents' Exhibit 14, Witness Kuhls, received in evidence.)

[fol. 794] By Exam. Trezise:

Q. I supposed it might make it a little clearer if you would tell us if you had calculated the distances in the same manner to make your comparisons.

A. Well, in the 23922 order, the Commission prescribed the formula for figuring the distances. There appeared to be the through rates for distances up to 130 miles and the Commission allowed the carriers to figure the distances via tariff routes, but there not being through rates to points beyond 130 miles from the Indiana groups, we used, as required by the Commission, the shortest route; the shortest available route.

Q. And there were the distances that you figured from Alpha to these destinations in the same manner. I just wanted to make it clear.

A. Yes, sir, take, for instance, Alpha. Where the distance is less than 130 miles, the distances are figured by the same formula; like Alpha to Amboy, 86.8 miles. That is the 23922 formula, but when you get from Rushville, let's see, that is line 6 on sheet 1, 168 miles, that, in this computation, is the short tariff route but in the 23922 scale would be the shortest.

Q. That is the point I wanted to make and thank you. There is not very much variation there?

A. I don't think so; not more than three or four miles.

Q. There would be a slight variation?

A. Yes.

By Mr. Hunter:

Q. Have you any further comment, Mr. Kuhls?

[fol. 795] A. No, that is all I have.

Mr. Hunter: We tender Mr. Kuhls for further examination, both direct, if any, by counsel for the carriers, and then for cross-examination.

Exam. Trezise: Do you have any direct questions?

Mr. Biaett: I have a question or two, Mr. Examiner.

Exam. Trezise: Mr. Biaett.

By Mr. Biaett:

Q. Mr. Kuhls, will you please refer to pages 4 to 7 of your Exhibit No. 12. The rates shown in Column C from Fulton County were prescribed by the Commission in the Midland Electric case, 232 I. C. C. 5, were they not?

A. That is right.

Q. And the rates which you show from Southern Illinois are made by addition of the 50, 60 and 70 cent differentials which the Commission prescribed to different parts of Iowa, are they not?

A. Yes, sir, as shown in Column D.

Q. Now, when you project the ultimate rates from Fulton County and Southern Illinois to the H. & H. Scale, does the exhibit show that Fulton County is a higher percentage of the H. & H. scale or is Southern Illinois a higher percentage of the H. & H. Scale?

A. It shows that Fulton County is the higher percentage of the H. & H. Scale.

Q. That is true throughout the points shown on the exhibit, is it not?

A. I believe so. After checking, I would say that is correct.

[fol. 796] Mr. Biatt: That is all, thank you.

Exam. Trezise: That is emphatically so, isn't it?

Mr. Biaett: Yes, it is.

By Exam. Trezise:

Q. Quite a disparity. You said yes?

A. Yes.

Mr. Biaett: That is all I have, thank you.

Exam. Trezise: Further questions?

Mr. Wilkinson: When the railroads are through, I have a few questions to ask.

Exam. Trezise: All right, cross-examine.

Cross-examination.

By Mr. Wilkinson:

Q. Mr. Kuhls, in your Exhibit 12, on page 11 and page 10—or page 11, rather you show the rates and mileages from the Springfield Group and the Brazil-Clinton Group. Taking Rockford, as an example, in line 21, your rate via the Milwaukee is 17 cents less than the rate via all of the other lines serving the Brazil-Clinton Group, is that not a fact?

A. That is right.

Q. Up to 1933 or 1934, your rate had always been the same as the rates of the other carriers serving the Brazil-Clinton Group, had it not.

A. Yes, and the same to Springfield.

Q. And the same to Springfield?

A. That is right.

[fol. 797] Q. After the 13th Section case, 23130 was decided, and nothing was done by the Interstate Commerce Commission with respect to the rates to Rockford and Freeport, your line, the Milwaukee, reduced its rate from Brazil-Clinton and Linton-Suilivan to Rockford and Freeport, did it not?

Mr. Vesey: If the Examiner please, we can't hear Mr. Wilkinson over here.

Exam. Trezise: Will you read the last question, please?

(Question read.)

The Witness: Yes, we reduced our rates from the two Northern Indiana Groups the same amount as Illinois rates were reduced by order of the Illinois Commerce Commission, 17 cents a ton.

By Mr. Wilkinson:

Q. And that restored the relationship, so far as your road was concerned, to those destinations, Rockford, Freeport and the others involved as between your Indiana mines and the Illinois groups, did it not?

A. That is right.

Q. And was the purpose of that change, Mr. Kuhls, to enable your road to continue to compete for the traffic and the movement of coal from the mines you served in Indiana to those destinations?

A. Yes, that was our contention.

Q. You did not contend in the docket there involved that the rates were unduly high and should be reduced, and [fol. 798] that the then $1.87 rate, or $1.70 rate which you proposed and put into effect, was necessary in order to reduce your rate to a reasonable maximum rate?

A. No, we didn't think our rates were higher than the reasonable maximum.

Q. As a matter of fact, it was the position of the Milwaukee Railroad in that proceeding, was it not, that all of the rates in Illinois and Indiana were too low?

A. Yes, that was the evidence shown in Docket 23130.

Q. But was it your opinion then and is it your opinion now that if you are going to transport coal from the mines served by you in Indiana to the Rockford, Freeport and other destinations that it is necessary for you to have the same relationship with Illinois that you enjoyed prior to the disruption by the Illinois reduction in rates?

A. That is our opinion.

Q. Now, is there anything peculiar in the service of the Milwaukee that makes it necessary for you to have that relationship that does not apply to the other carriers serving the Brazil-Clinton and Linton-Sullivan Groups in Indiana?

A. Well in our court case we showed that we were a single-line railroad from the origins to the destinations and that our mines were located at a lesser distance than the mines on the other railroads.

Q. Yes, but leaving aside that factor, and I am thinking [fol. 799] only of the ability to move freight, whether it is a few miles more or less, the other roads in Indiana, if they are going to move coal in a competitive market must have the same rates as you have, must they not, from the Brazil-Clinton Field?

A. I think that is axiomatic.

Q. Now, from your long experience as a traffic manager, coal traffic manager, Mr. Kuhls, and leaving out these items of transportation conditions and statistical research, is there any reason why the Brazil-Clinton Group as a whole, with approximately the same distance to Rockford as Springfield has, four miles less than Springfield, should have a rate 17 cents higher than the rate from the Springfield or Central Illinois Group to Rockford?

A. Well, there are some things that enter into it which, of course, may not be pertinent; but the other mines may not need these marketts to the same extent that the mines on the Milwaukee Railroad do.

Mr. Vesey: Could I have that answer?

(Answer read.)

By Mr. Wilkinson:

Q. In other words, if they don't need the market and don't ship their coal in there, it doesn't make any difference what their rate is, it is just a paper rate?

A. That is right.

Q. But if they are going to participate in that market, they must have comparable rates to those of the Milwaukee? [fol. 800] A. I think that is true.

Q. And prior to the disruption of this rate adjustment in 1930 or 1932, when the Illinois Commerce Commission reduced the rates to Rockford and Freeport, the parity between Springfield and Brazil-Clinton, or the relationship of Brazil-Clinton 30 cents under Southern Illinois, had existed for 25 or 30 years, had it not?

A. Back in 1901 and 1902, yes.

Q. And during that period, or at least during your experience, while that old relationship existed, Southern Illi-

nois, Springfield and Indiana were shipping coal to these markets, were they not?

A. That is right.

Q. Since the change in the relationship caused in 1930 and up to, we will say, October of 1940, the bulk of the coal from Brazil-Clinton and Linton-Sullivan that moved to Rockford and Freeport originated on your line from Indiana, did it not? That is, the bulk of the coal from Linton-Sullivan and Brazil-Clinton?

A. Yes, practically all of it.

Q. About 99 per cent, wasn't that your estimate of it?

A. Yes, sir.

Q. Prior to 1930, the other roads, like the C. & E. I. and the Pennsylvania and the New York Central, they originated some coal that moved out?

[fol. 801] Mr. Vesey: We didn't hear that.

By Mr. Wilkinson:

Q. Prior to 1930, the disruption of the rates, the other lines serving Brazil-Clinton and Linton-Sullivan originated substantial quantities of coal moving to Rockford and Freeport, did they not?

Mr. Stadell: I am going to object to that question unless the witness is shown to be qualified to testify with respect to the tonnages moving over those other railroads.

Mr. Wilkinson: I didn't mean exact tonnages. I meant whether they shipped substantial quantities.

Mr. Stadell: He hasn't been shown to be qualified to testify with respect to the tonnages moving over those railroads or the mines they moved from.

Exam. Trezise: I think under cross examination he may testify to it.

Mr. Stadell: I am wondering if this is cross examination.

Mr. Wilkinson: It is not direct.

Mr. Stadell: I was just wondering about that.

Exam. Trezise: Oh, I think we will let him answer.

The Witness: I don't have any figures in my mind, Mr. Wilkinson.

Mr. Wilkinson: All right.

By Mr. Wilkinson:

Q. Before I leave this page 11, I understood from your direct evidence, Mr. Kuhls, that this average difference

which you showed to these representative points of Brazil- [fol. 802] Clinton, having a 22.3 mile longer haul than Springfield to those points, you thought that might or could in some way be justified of having some kind of a differential Brazil-Clinton over Springfield to these representative points, and you referred to some differentials in some rate scales or something of that sort.

A. That figure you gave has been corrected to 24.4.

Q. Very well, 24.4.

A. No, I had no intention of implying that the Brazil-Clinton rates should take a differential over Springfield to any particular or individual destinations. There are some destinations in the southern part of the state, not in the northern part, in the southern half of this suspended territory, where the mileage is in favor of Springfield, and to those few points it probably would be right to have Brazil-Clinton over Springfield, but to the points in the northern part of that territory, such as Rockford and Freeport, there wouldn't be any justification for carrying Brazil-Clinton on a higher level than Springfield.

Q. I take what you mean, as an illustration, at Dixon you show that Brazil-Clinton is 74.5 miles longer haul than Springfield and that it might well be that an exception be made of the parity of the rates between the two groups at Dixon, where there was that substantial difference in mileage.

A. That is right.

By Exam. Trezise:

Q. That, as I understand it, then, is the principle that [fol. 803] you are advocating here?

A. Yes.

Q. The illustration that you have given here is that from Springfield to Rockford you have an average distance of 260.7 miles and you have an average distance from Brazil-Clinton to Rockford of 256.9 miles; and my question is, do you think the principle should be applied with respect to the reasonable rates from Indiana and from Illinois to these respective destinations by taking into consideration the approximate distances? You are subscribng to that principle?

A. When I submitted this exhibit on direct, I said that, as a whole, the difference in the proposed rates, Springfield

versus Brazil-Clinton, appeared to be satisfactory for the purpose of getting this adjustment into effect. Now, I have no intention to advocate any change in the rates that the carriers have proposed and which are under suspension. I think that, as a whole, it is a reasonable relationship.

Q. And you are limiting that principle just to the particular rate here mentioned and you do not go any farther than that with respect to the rates from the respective groups in Indiana and Illinois to the respective destinations. Is that what you mean to infer by your last statement?

A. Yes.

By Mr. Wilkinson:

Q. Following that up, you said, in respect to a question from the Examiner, that the rates as a whole are satisfac- [fol. 804] tory. Now, by that do you mean that the rate of $1.95 from the Springfield Group to Rockford and a rate of $1.95 from the Milwaukee mines in the Brazil-Clinton Group to Rockford and a rate of $2.12 from all the other mines in the Brazil-Clinton Group is satisfactory to you and other carriers in Illinois?

A. It is satisfactory to the respondents that do not take exception to it.

Q. But you don't believe it is satisfactory to the operators in the Brazil-Clinton group that are served by the C. & E. I. and the Pennsylvania and the other lines that serve Brazil-Clinton in Indiana, do you?

A. It may not be.

By Exam. Trezise:

Q. Well, you could have a variation of rates from this origin group. If you are advocating the method of distance from these groups, and where the distances are approximately the same from Springfield and from the Brazil-Clinton Group, on the average, you think the rates should be the same, is that right?

A. Well, they——

Q. That is what you have said, as I understand it.

A. Yes, they could be the same.

Exam. Trezise: They could be the same. All right.

By Mr. Wilkinson:

Q. Well, as a traffic manager you think they should have the same but as a good fellow in this case you don't want to quarrel with the other rate, isn't that right, Mr. Kuhls, [fol. 805] or you don't want to disagree with them in their relation?

Exam. Trezise: I am sure that is going to help the Commission a lot in deciding this case.

The Witness: The proposal of the carriers is to increase rates as they exist today in the same amount in cents per ton. That is our proposal and I am afraid we would be here a long time if we went into divisions of these present relationships and leveling off of the rates on different origins.

By Exam. Trezise:

Q. What do you mean by those two words that you stated, the leveling off and division of whatever you said it was? I don't understand what you are talking about, quite.

A. Well, I am speaking to the adjustment as a whole, and you will find that there are some of the points normally taking the Northern Illinois District rates, varying rates, several to the particular destination, and if we had to arrive at one rate on each mine in the Northern Illinois District for the Fulton County and so-called arbitrary points near Fulton County, I say we would be here a long time.

Q. Oh, but you do advocate that we follow somewhat the same principle that was followed in the Midland case in fixing differentials, so far as your Brazil-Clinton and Linton-Sullivan goes, but you stop right there. You said you didn't want to go any further than that because your line perhaps was not interested. The Commission would like to get your view on it, Mr. Kuhls. I think it would be very helpful. [fol. 806] If you think that the grouping from Indiana should be somewhat the same as established in the Midland case, in its relation to the Illinois groups, if it is necessary that some of those things be ironed out, perhaps you could give us some very good advice upon that.

A. Well, all that may follow, but we are here to show that the rates that we have proposed are not more than maximum reasonable rates, and in a good many instances they are less than maximum reasonable rates.

Q. Well, you do not subscribe to the theory of having a rate of $2.12 from your—let's say $2.12—from your Brazil-

Clinton mines on some lines and $1.95 from others? You, as a rate man and the experiences you have had, that isn't quite the right thing, is it?

A. Well, I am sure the Commission can deal with that situation without any suggestions from me.

By Mr. Vesey:

Q. In order that I might understand this answer, may I ask whether you meant that the disparity was so obvious that anyone could deal with it?

Mr. Hunter: I think he meant the Milwaukee Railroad would have no objection to the other lines meeting the Milwaukee rate.

By Mr. Hunter:

Q. Is that what you meant, Mr. Kuhls?

A. We would like approval of our rate, and if the other railroads feel that they should meet that rate, why, of course, we wouldn't have any just grounds to object to it.

[fol. 807] By Exam. Trezise:

Q. Well, you do think that the rate should not be more than $1.95 from this Brazil-Clinton Group to Rockford? That is right, isn't it?

A. I think that is self-evident by the distance from the group as a whole. The Brazil-Clinton Group as a whole is less than the Springfield Group and it doesn't seem proper, when we get down to it, that the rate should be higher from the Brazil-Clinton Group than from the Springfield Group.

Q. Then the sum and substance of your testimony is to cast some aspersions on this $2.12 rate that is proposed here by the other lines from the Brazil-Clinton Group to Rockford?

A. I think so.

Exam. Trezise: Thank you.

By Mr. Wilkinson:

Q. Now, on this question of distance, where you have an adjustment that takes in all of Northern Illinois, or did; and takes in Wisconsin and Iowa and Minnesota, you have the same adjustment in all of the surrounding territory of

a parity of rates as between Brazil-Clinton and all the mines, and the mines in the Springfield Group, is there any reason, from a traffic standpoint, Mr. Kuhls, why that adjustment should be broken down in spots in Northern Illinois, where there is a difference of 15 or 20 miles one way or the other, and yet maintained in the territory beyond?

A. No, I think the hauls are sufficiently long to justify a parity.

[fol. 808] Q. In other words, Mr. Kuhls, at Belvidere, where Brazil-Clinton, on the average, is 18 or 19 miles less than Springfield, you have a rate from Brazil-Clinton under the Springfield rate, while at Byron, where the Brazil-Clinton haul is seven miles more than Springfield, your have a rate from Brazil-Clinton that is a little bit more. In other words, you would treat it all as a unit in these larger adjustments and ignore those slight differences in mileages?

A. Yes, that is right.

Exam. Trezise: And what your question relates to, Counsel, is destinations that are all over 150 miles?

Mr. Wilkinson: Oh, yes, long-haul destinations where differentials apply in differential territory.

By Mr. Wilkinson:

Q. Now, will you turn to page 12 of your exhibit and we will look at Rockford again there on page 12, where you show the differentials as between the Brazil-Clinton and the Linton-Sullivan group. Now, you show 5 cents and 10 cents at Rockford. Now, that 10 cents is the differential as between the mines on your line in Brazil-Clinton and the mines on your line in Linton-Sullivan, is that not correct?

A. Yes, and also the Illinois Central.

Q. Yes. We will come to that hybrid in just a minute.

Now, as between the mines on the C. & E. I. in Linton-Sullivan and the mines on your line in Brazil-Clinton, going to Rockford, the differential is more than 5 or 10 cents, is it [fol. 809] not?

A. It is 12 cents, I believe.

Q. Well, as a matter of fact, isn't it 25 cents? Your rate from Clinton to Rockford is $1.95 and the C. & E. I. rate Linton to Rockford is $2.22, isn't that correct?

A. I though it was $2.12, Mr. Wilkinson.

Q. No, it is $2.12 from Brazil-Clinton, and it is $2.22 from Linton, isn't it, or $2.17?

A. $2.17. They have a 5 cent differential there.

Q. Yes. Now, as between the C. & E. I. mines in Linton and your mines in Clinton, the differential is 22 cents, isn't it?

A. That is right.

Q. Now, that does not appear——

Mr. Vesey: Just one moment. In view of that answer, I move to strike page 12 physically from this exhibit in that it incorrectly purports to show that which it was represented to show as an exhibit, in that it does not show the differences here in terms of cents per ton, differential between the Brazil-Clinton and Linton-Sullivan districts in Indiana.

Exam. Trezise: Well, because it is wrong, is that what you mean?

Mr. Vesey: Yes, because to anyone who should look at this exhibit without reading the testimony in connection with it, it shows that there are other differentials that go into these two districts. It would create a misapprehen- [fol. 810] sion in that individual's mind; and in view of the importance of the question here of rate differences and rate differentials for differences in distances, I submit that that page is highly objectionable.

Mr. Biaett: Does Mr. Vesey have any other grounds than the superficial grounds which he has stated for the objection?

Mr. Vesey: If that be superficial, I would like to know what a concrete ground is, when it comes to an exhibit.

Exam. Trezise: The Examiner hasn't heard any satisfactory reason to exclude it, Mr. Vesey.

The Witness: May I say that these differentials shown on sheet 12 are the differences in the individual rates appearing in Exhibit No. 4. They don't purport to show the difference between a low rate on one railroad and a high rate on the other, but the differential observed by the individual railroad publishing its own rates.

Mr. Vesey: May I ask a question right there? Would you mind, Mr. Wilkinson?

Mr. Wilkinson: No, go ahead.

By Mr. Vesey:

Q. Page 12 doesn't show that that exhibit purports to apply only to the rates applicable to the mines on the Milwaukee Railroad, does it?

A. No, it applies to all rates shown in Exhibit 4.

Q. And it purports to show the differences in terms of cents per ton applicable between the Brazil-Clinton, Linton-[fol. 811] Sullivan Districts in Indiana on coal moving to the towns shown in the first column, does it not?

A. Yes, that is correct.

Q. And that, as it stands here, it does not show the difference in terms of cents per ton applicable to the mines in the several districts moving to those towns via the various roads moving such coal, does it?

A. It does not purport to show that. It shows the differentials between the rates for which the authority is shown on the bottom of the sheet; Exhibit No. 4, Section III. Those are the differentials between rates shown in Exhibit 4. I don't see what is wrong with it.

Mr. Wilkinson: Mr. Kuhls, let me inject a question on that subject.

By Mr. Wilkinson:

Q. In your column under "Brazil-Clinton," you have shown the average haul via short tariff routes from all of the mines via all of the lines serving Brazil-Clinton, have you not?

A. The mileage, yes, sir.

Q. Now, that mileage is the average of the group?

A. That is right.

Q. That is clearly indicated by the same reference to Rockford, where the average from the group is 254, from your line is 237 and rfom the $2.12 rate lines, 256 miles. The same is true with regard to the distances from Linton-Sulli-[fol. 812] van. They are the average of the distances via short tariff routes, irrespective of the rates that apply?

A. That is right.

Exam. Trezise: That is right.

By Mr. Wilkinson:

Q. Now, when you are treating with mileages, you are treating those groups as a unit, are you not, each group as a separate unit and as a whole?

A. Treating the mileage as a unit, yes.

Q. Now, when you come over to your differential mileages, you treat each group as a whole, do you not?

A. No, I am treating,——

Q. No, I am just talking to your differential mileages here, your 43 and 37?

A. Yes, the mileages as a whole.

Q. But when you come over to your differential in rates, I now understand that you are treating railroad by railroad on that differential and not an average group differential?

Exam. Trezise: Well, he wouldn't have two differentials out there if he had only one line. He has got five and ten.

Mr. Wilkinson: Yes.

Exam. Trezise: He has two of them, evidently.

Mr. Wilkinson: But he hasn't got all of them. There are other differentials in there and his exhibit doesn't show, on this 5 and 10, that he is treating with individual railroads to arrive at that 5 and 10.

[fol. 813] The Witness: I use different authorities. I used Exhibit 3 for the distances.

By Mr. Wilkinson:

Q. Yes.

A. I used Exhibit 4 for the rate. There is no tie-up between the two.

By Exam. Trezise:

Q. Let's ask about Byron, then. You say 5 and 10. Are there any other differentials except 5 and 10?

A. Not in the rates published in Exhibit No. 4.

By Mr. Wilkinson:

Q. Well, now, if I take Exhibit No. 4 to Byron and I find rates to Byron of $1.90, $2.00 and 2.07 from Brazil-Clinton to Byron, three different rates. Now, as between that $1.90 rate via the Milwaukee from Brazil-Clinton and your $2.00 rate from Linton-Sullivan to Brazil-Clinton, there is a differential of 10 cents, isn't there, which you have shown on page 12?

A. Yes, sir.

Q. As between your $1.90 rate from Brazil-Clinton to Byron and some road's $2.12 rate from Linton-Sullivan to Byron, you have a differential of 22 cents—or 27 cents, do you not?

A. No, I wouldn't call that a differential.

Q. Oh, you don't call that a differential?

A. No, it is a difference.

Q. I see. When it comes to differentials in rates, you split up the groups, but when it comes to mileages, you want to put them all in one boat?

[fol. 814] Mr. Bather: I object to Counsel's arguing with the witness. Mr. Kuhls explained this exhibit two or three times and he persists in arguing with him. I think the matter is clear.

Mr. Vesey: I submit, if the Examiner please, that is a further reason for striking this particular page from the exhibit, and I now renew the motion on the additional ground that, as evidenced by the examination, page 12 of this exhibit tends merely to confuse rather than to clarify the evidentiary matter important in this proceeding.

Mr. McElroy: I take it that motion was directed to the Interstate Examiner?

Mr. Vesey: That is right.

Exam. Trezise: Pardon me while I do a little figuring here.

By Exam. Trezise:

Q. Mr. Kuhls, do you say that the differential between these respective groups, Brazil-Clinton and Linton-Sullivan to Byron would be, under the proposed rate, 5 and 10 cents?

A. Yes. Rates published by one railroad carry a differential of 10 cents. Rates published by another railroad carry a differential of 5 cents.

Q. And considering the same carriers that carry these rates from the respective points, your 5 and 10 cents would be correct?

A. That is right.

[fol. 815] Q. But if you took the $2.00 proposed rate and compared it—that is from Brazil-Clinton—and compared it with the $2.12 rate from the Linton-Sullivan group, you would have 12 cents, but you didn't mean the exhibit to indicate that sort of a relatidnship?

A. That, Mr. Examiner, in my opinion is the difference, and if you didn't consider it as such, you would not have a 30 cent differential between Springfield and Southern Illinois.

For example, to Dixon the Wabash Railway publish a rate of $1.80 from the Springfield District. The other railroads

publish $1.70. Therefore the differential between Springfield and Southern Illinois is not 30 cents. It is only 20 cents when you consider the Wabash mines.

Q. But with the explanation that your differentials or differences here that you show are designed to show the differences of certain same carriers, so to speak, from the respective groups, it would be 5 and 10?

A. That is right.

Mr. Wilkinson: Well, right along that line, looking at page 6 of the proper section in Exhibit No. 4, or No. 3, I find that the Illinois Central Railroad published a rate of $1.95 to Byron from its mines in the Linton-Sullivan field. I don't find any publication of rates by the Illinois Central from any mines in the Brazil-Clinton field. Now, do you mean that there is no differential or relationship between [fol. 816] the rates published by the Illinois Central and the Brazil-Clinton rates, or just differences?

Exam. Trezise: Well, I meant that where the carriers do publish rates from the two groups, that is what it is, as between carriers; is that correct?

The Witness: That is right.

Mr. Wilkinson: Now, we understand each other.

Exam. Trezise: I think it is clear on the record what it is, however infirm it may be from the standpoint, considering the relationship of the groups. I think it is perfectly clear and we will accept it.

By Mr. Wilkinson:

Q. You mentioned, Mr. Kuhls, a few minutes ago that a direct line, single-line haul had advantages that should be recognized in rates. Do you think that a direct single-line haul that is 30 or 35 miles longer than a two-line haul justifies a rate of 10 or 12 cents less than the two-line haul from the same origins?

A. No, I don't think it makes any difference.

Q. A two-line haul as against a single-line haul shouldn't make any difference in the rates on these longer hauls?

A. The Commission has recognized the difference in one instance where considerable traffic was involved, that is lignite coal from North Dakota to—North Dakota and South Dakota, they prescribed a distance rate for joint-line hauls 20 cents per ton higher than the scale for single-

[fol. 817] line hauls, but outside of that I don't think there are very many cases where there is a distinction.

Q. Now, I direct your attention to page 30 of Section V of Exhibit 3. Have you got it?

A. Yes, sir.

Q. Now, as a traffic man, is there any good and valid reason for a rate of $1.90 via the I. C. Railroad direct to Rockford from the Linton-Sullivan Group for a haul of 348.7 miles and a $2.02 rate via that line in connection with your line for a 311 mile haul, or hauls via the other carriers ranging from 270 miles up to 317 miles?

A. I don't believe so.

Q. Now, that same thing exists, does it not, Mr. Kuhls, at a number of these suspended points, that is, the points to which the rates are suspended that do not appear in these various exhibits? That is, you have taken some representative points but you have the situation existing to many points in Northern Illinois where your road publishes a rate from Linton-Sullivan or Brazil-Clinton that is less than the other roads serving those groups where the destination is on your line, but where the destination is not on your line you publish the same rate as the balance of the group, isn't that correct?

A. That is correct.

Q. Now, the Illinois Central is following the same pattern, is it not, of publishing the competitive rate, the rate [fol. 818] the same as yours, where it is hauling coal to a destination on its own line in this territory?

A. Yes, it holds the Rockford-Freeport rates as maximum.

Q. So that it is recognizing by the publication of rates a truism, you told us, if they want to compete in the business they have got to be competitive with these Illinois rates?

A. I assume that was the reason that they made the adjustment.

Q. Now, in these exhibits, Exhibit No. 3, all of the rates and the distances from Indiana mines are not shown, are they, Mr. Kuhls?

A. All the rates and distances?

Q. Yes, from origin points in Indiana. I will withdraw that question.

You publish rates from three or four points of origin in Indiana which are not shown in these exhibits, is that not correct?

A. Oh, you are referring to——

Q. I am referring to what is sometimes called your Princeton-Ayrshire Group.

A. I didn't know we had one.

Q. I said "sometimes".

A. I never heard that we had such a group. It is news to me.

Q. Well, you do publish some rates from some mines that are south of your southernmost Linton-Sullivan Group, do you not?

A. Yes, we have a few——

[fol. 819] Q. And those rates, for some reason or other, happen to be 7 cents per ton higher to all of these destinations than your rate from the mines in the Linton-Sullivan Group, is that correct?

A. To these destinations, yes.

Q. Yes.

A. And others, of course.

Q. And others. Now, generally speaking, the other——

Mr. Cardy: I didn't hear that. What destinations? He said "these destinations."

Mr. Wilkinson: These destinations and others in this territory.

Mr. Vesey: Is that from the A. W. W. mines?

Mr. Wilkinson: No, these are from mines on the Milwaukee Road.

Mr. Vesey: The Princeton-Ayrshire Group?

Mr. Wilkinson: Well, they are south of Linton-Sullivan.

Exam. Trezise: They haven't been named yet as to what group they are in. They are south of the Linton-Sullivan.

By Mr. Wilkinson:

Q. Generally into this territory as between the mines on the C. & E. I. and the New York Central and other roads other than the Milwaukee, serving the Linton-Sullivan Group, and the Princeton-Ayrshire Group, and on the Milwaukee to points in Wisconsin, Iowa, and Minnesota, the differential between the Princeton-Ayrshire Group and the [fol. 820] Linton-Sullivan Group is 7 cents, is that not correct?

A. To that territory you named.

Q. Yes. And on these mines that are in some unnamed group on your line, the differential over the mines in the Linton-Sullivan Group is 7 cents?

A. It so happens, to this territory.

Q. Yes.

A. But that is not the case in all instances. Princeton to Chicago is 12 cents over Linton-Sullivan and these mines are 7 cents over Linton-Sullivan or 5 cents less than Princeton.

Q. Now, there is a difference in the differential to Chicago and I believe right along the lake shore in Wisconsin, where the differential is, between Linton-Sullivan on the one hand and Princeton, is a nickel wider than into the territory west of that little strip, and that was the result of the reduction ordered in the old Indiana-Illinois Coal Cases, 128 I. C. C., was it not?

A. Yes, I mentioned that because I didn't want to leave the impression that these mines were on the Princeton basis. It so happens that the differential is the same to this particular territory.

Q. And the differential is the same to all territory except to Chicago and that narrow strip in Wisconsin?

A. And Indiana.

Q. And Indiana?

[fol. 821] A. The State of Indiana.

Q. Well, in Indiana the standard differential doesn't apply on those shorter hauls in Indiana, does it?

A. That is right. The rates from these particular points are lower than the Princeton group.

Q. There is a different grouping as Indiana moves east than as it moves west and north?

A. That is right.

Q. That is a different differential adjustment?

A. That is right.

Q. Now, if these mines of yours which you say are not in the Princeton-Ayrshire group but take the same differential into this territory were included as a part of the Princeton-Ayrshire Group, the result would be to reduce the average distance from the Princeton-Ayrshire Group to all of these representative destinations, would it not?

A. That is right. The tail would wag the dog.

Exam. Trezise: Mr. Wilkinson, if you have many more questions, we will have to suspend for a little while.

Mr. Wilkinson: I have a few more.

Exam. Trezise: Take a short recess.

(A short recess was taken.)

Exam. Trezise: All right, gentlemen, when you are ready, we will continue. Mr. Wilkinson.

By Mr. Wilkinson:

Q. Mr. Kuhls, before we leave this question of rates of [fol. 822] differentials, you were a witness in Docket 4368, were you not, which involved this same territory, generally?

A. I was.

Q. And you are familiar with the decision of the Interstate Commerce Commission in that case, are you not?

A. Yes, sir.

Q. On behalf of the Milwaukee Railroad, are you opposed to publishing rates from the Illinois and Indiana Groups in line with those approved by the Interstate Commerce Commission in its decision in Docket 4368?

A. Well, the answer there has to be yes because we didn't make any adjustment in the rates following that decision.

Q. That decision would have preserved and would have restored the differentials as between the Illinois, Indiana and Western Kentucky Groups——

Mr. Cardy: Mr. Wilkinson, we can't hear you at all.

By Mr. Wilkinson:

Q. I say that decision would have restored the differentials as between the Indiana groups and the Illinois groups as they existed prior to the reductions under the Illinois Commerce Commission's order of 1930 or 1932, would they not?

A. That is my recollection.

Q. The only change as to the status that existed prior to the Interstate Commerce Commission's decision is that the rates from Linton-Sullivan would have been in all instances [fol. 823] 10 cents over the rates from Brazil-Clinton in lieu of the 5 cent differential that had previously existed to a number of these destinations?

A. Yes, sir.

Q. And that adjustment would have been the same as the adjustment to all destinations in Wisconsin other than Beloit and the destinations in Iowa and Minnesota?

A. That is right.

Q. And the Milwaukee Railroad is opposed to that adjustment?

A. Well, the Milwaukee Railroad, of course, is the respondent in this case and we have made certain proposals and we hope that proposal is given effect.

Q. Well, the proposals, as a matter of fact, were the result of group action by a number of carriers, were they not?

A. Compilation of the data was handled by a committee of railroads.

Q. Well, as a matter of fact, didn't you and the other railroads in Indiana, except the Southern and one or two of the others, act in concert in proposing tariffs that were filed about simultaneously, publishing this adjustment that you are now proposing?

A. Well, we seem to have the same opinion as to what should be done to stop these further reductions to Wisconsin destinations by reason of the low level of rates to Northern Illinois. Then we had the decision of the Com- [fol. 824] mission in the Beloit case to comply with.

Q. Well, you complied with a similar decision some years ago, did you not, without any great difficulties?

A. By reducing the rates, yes, but we didn't want to make a further reduction.

Q. Would it have been impossible, in your opinion, as a traffic man, would it have been impossible to have complied with the order in the Beloit case by increasing the rates to Rockford and maintaining the old standard differentials between the various groups?

A. I think it would, because the order required the publication of rates to Beloit 15 cents per ton over the rates in effect to Rockford.

Q. Well, the old order required 25 cents over the rates to Rockford, didn't it?

A. That is right.

Q. And you did that in the old case by publishing the rate from Southern Illinois and letting the other groups in Indiana and Illinois fall in under their standard differentials? That is what you did before, isn't it?

A. I believe so.

Q. Why couldn't you have done it this time, by increasing the rate to Rockford and letting all the other groups

fall into the Rockford picture under their standard differentials?

A. Well, we wanted to make Rockford 15 cents under the [fol. 825] Beloit rather than Beloit 15 cents over Rockford.

Q. Then why couldn't you have done that; just reduced the rate to Rockford so that it was 15 cents under Beloit?

A. Well, that would have been a reduction instead of an advance.

Q. I see. I thought that is what you said you wanted to do, by leaving the rate to Beloit where it was?

A. Maybe I misstated it. We wanted to make the rates to Beloit 15 cents over Rockford rather than making Rockford 15 cents under Beloit.

Mr. Bather: No, that isn't a correct answer.

By Mr. Bather:

Q. In other words, you wanted to make the rate to Rockford 15 cents under the existing rate to Beloit?

A. No.

Q. Then how did you arrive at the increase?

A. Beloit 15 cents over the existing rates to Rockford.

By Mr. Wilkinson:

Q. But you have increased the rates to Rockford from all of the Indiana points except via your own line, haven't you?

A. No, we are proposing an increase in our rates from, well, the Clinton District, $1.80 to $1.95.

Q. That is to Rockford. And your rate to Beloit will be what, $2.10 from Brazil-Clinton?

A. That would be 15 cents higher or $2.10.

Q. But the rates from the other carriers serving Brazil-Clinton will be 12 or 17 cents higher than that, will they not?

[fol. 826] Exam. Trezise: 17 cents higher, is that what you said?

Mr. Wilkinson: That is what I asked him, if that is what it would be.

Exam. Trezise: Whether it would be 17 cents higher? That is under the proposed rates?

Mr. Wilkinson: Yes.

The Witness: Our rate to Rockford will be $1.95.

By Mr. Wilkinson:

Q. That is an increase of 15 cents over your present rate?

A. That is right, and our rate to Beloit will be $2.10.

Q. Which is no increase?

A. No change.

Q. No change at all in your rate to Beloit?

A. That is right.

Q. But for the other carriers serving Brazil-Clinton, their rates would be increased both to Rockford and to Beloit, would they not?

A. Yes, sir, $2.12 at Rockford, which is a 15 cent increase.

Q. So that as a result of this proposal, instead of having a parity of rates at Beloit, Wisconsin, from all the mines in the Brazil-Clinton Group, you would have the mines on the Milwaukee with a rate of $2.10 and the mines of the C. & E. I. and other roads with a rate of $2.27?

A. That is right.

Q. The same thing would be true with respect to Linton-[fol. 827] Sullivan, would it not?

A. Yes, sir.

Q. That is with the 10 cent differential of Linton-Sullivan over Brazil-Clinton.

Mr. Cardy: Mr. Wilkinson, could you ask this question, whether or not the differential would follow the rates from the carriers taking the higher rate and not the Milwaukee more distant groups? Is that true?

Mr. Wilkinson: You ask what you have in mind, Mr. Cardy.

By Mr. Cardy:

Q. In other words, in applying the rates from the Princeton District, a differential would follow the rates from the carriers taking the higher rates, is that true, not the Milwaukee rates?

A. Yes, the higher rate.

By Exam. Trezise:

Q. It would preserve the present differential, is that the point?

A. It would make Beloit 15 cents over Rockford and would use the present rate from the Princeton Group to Rockford on which to base the rate to Beloit.

By Mr. Cardy:

Q. In other words, it would preserve the differentials as between all of the lines except the Milwaukee Railroad?

A. Well, it would preserve all the differences.

By Mr. Wilkinson:

Q. Well now, Mr. Kuhls, is that exactly correct? Is it not a fact that the Southern Railway, serving the Princeton-[fol. 828] Ayrshire District, has not increased its rates to Beloit to this basis?

A. Well, let's see. Rockford from the Princeton Group would be $2.24 and the present rate to Beloit is $2.27.

Q. Via the Southern?

A. The present rate to Beloit, yes.

Q. Oh, yes. Now, I am talking about the new rate, the proposed rate.

Exam. Trezise: To Beloit?

Mr. Wilkinson: Yes.

Exam. Trezise: Of the Southern?

Mr. Wilkinson: Yes, the proposed rate.

By Exam. Trezise:

Q. Would you say $2.27?

A. Yes, sir.

Exam. Trezise: That is right, isn't it?

Mr. Wilkinson: That is the proposed rate, yes.

The Witness: That is the present rate.

By Mr. Wilkinson:

Q. That is the present rate and that is also the proposed rate?

A. No change.

Q. There is no change by the Southern, but you would increase the others 15 cents a ton to $2.42. In other words, Mr. Kuhls, the Southern has decided it would like to continue to participate in the possibility of traffic to Beloit?

A. I haven't gone into the Princeton rates. I am not [fol. 829] familiar with it, with the present and proposed.

Q. From your experience as coal traffic manager in soliciting freight, your familiarity with the field of coal, would

you think it would be possible for coal of the same quality to deliver out of the same district with a difference of 15 cents in the freight rate?

Mr. Biaett: May we have that question read, please, Miss Reporter?

(Question read.)

The Witness: Are you talking about the Princeton coal?

By Mr. Wilkinson:

Q. Well, Princeton——

A. Between Southern versus other railroads?

Q. Yes.

A. Well, right at the present time, of course it doesn't make any difference what the rates are, the coal would move.

Q. I am talking about normal competitive conditions.

A. Well, in my opinion I don't——

Mr. Stadell: Now, I object to the witness giving an opinion on that, Mr. Examiner, on the grounds that there are many things that influence the sale and the movement of coal besides the difference or the coal being of the same quality. It may be influenced by the sales effort, cost of production, for instance; a great many other elements besides the quality. In addition, this witness hasn't been shown to be qualified to testify with respect to the com- [fol. 830] petition between any of these coals in the destination territory involved.

Exam. Trezise: Well, this was a hypothetical question, in a sense. I don't know whether he is qualified to answer the question or not.

By Exam. Trezise:

Q. Having all these things in consideration, Mr. Kuhls, that Mr. Stadell has mentioned, what is the sense of having different rates in the same group when they are in the same general producing territory? That is what the Commission wants to know and we might as well hit it one way as another. We have been beating around the bush here, going one way and then another. Why can't we have an answer to the question?

Mr. Stadell: You asked him a different question.

Exam. Trezise: I have asked him a different question.

Mr. Stadell: All right.

Exam. Trezise: It is true.

Mr. Vesey: If the Examiner please, I submit he has already answered the question by his expose of the freight picture of the Milwaukee Railroad.

Exam. Trezise: All right.

The Witness: In my opinion, in normal times coal from the same origin group would have to have a parity of rates with competing coal to be marketed in this territory.

By Mr. Wilkinson:

Q. This little maverick group of three small mines on your line that were south of Linton-Sullivan, what rates [fol. 831] are you proposing from those mines to Beloit?

A. They would carry the present differential of 7 cents over the proposed rates from the Linton Group. They would follow along with whatever is proposed from the Linton Group.

Q. In these class rates on pages 14, 15, 13 of your exhibit——

Mr. Cardy: What was that page, Mr. Wilkinson?

Mr. Wilkinson: 13 to 15 of Exhibit 12.

By Mr. Wilkinson:

Q. Coal is not given a letter classification in the Illinois Freight Association territory, is it?

A. It is in Western Classification. I am not sure now whether it has a letter rating in Illinois territory.

Q. Now, these rates that you show on page 13, are those rates under which substantial quantities of these various commodities move or are those rates the result of a spasmodic or a single shipment of a car or two and then an application for, claim for reparation based on paying an unreasonable rate and these rates fixed as the basis of awarding reparation?

A. It is my understanding that there is substantial movement on these ratings.

Q. Did you check into any of these cases to see whether there was a movement of the commodity at all comparable with the volume of the movement of coal in this general territory?

A. No, I didn't check into that feature.

Q. So we don't know whether or not this 20 per cent of first class that was applied to glue stock in 161 I. C. C. [fol. 832] moved five cars of glue stock or five thousand cars?

A. No, without anything in the record, you wouldn't know that.

Q. Well, that would have some bearing upon the question of the percentage of first class that a commodity would take, would it not, the volume of movement?

A. Oh, yes, and appreciating that we have not proposed 20 per cent of first class. These suspended rates that I testified to were generally less than 12 per cent.

Q. The first class rate, like all class rates, is really kind of a mileage scale, isn't it?

A. Yes. All your class rates are on a mileage basis.

Q. And the entire structure of that class rate situation is different from the coal rate structure, isn't it, in this territory, where we go by groups and differential relationships?

A. Yes.

Q. The two are hardly comparable, are they, Mr. Kuhls?

A. Well, they are not comparable in some senses but I think for the purpose that it has been submitted here, that is, a yardstick to measure the level of the rates, I think it is pertinent.

Q. Well now, class rates are governed very closely by the mileage, is that not true, between the point of origin and the point of destination?

A. Yes, and the Commission has prescribed a good many mileage scales on coal.

[fol. 833] Q. Yes.

A. As a basis.

Q. But your group rates on coal to a large extent ignore distance, do they not?

A. They do to some extent, yes.

Q. Well, now, for example, you have the same rate on coal from Springfield, the City of Springfield, as you have from down in the very farthest southwest corner of the Springfield Group, the difference of 100 miles, maybe? You would have the same rate? That would be impossible under any class rate structure?

A. That is true.

Exam. Trezise: Haven't you gotten all the answer out of him you can get?

Mr. Wilkinson: I was trying to find out how this thing had any bearing whatsoever on this case; these exhibits.

Exam. Trezise: Well, if you want to pursue it further, go ahead.

Mr. Wilkinson: No, if it is clear to you, why, you are the one I want to satisfy.

By Mr. Wilkinson:

Q. You showed a lot of rates from the Outer Crescent to Wisconsin destinations. Isn't a great deal of Outer Crescent coal that moves to these Wisconsin destinations dock coal that moves up to the lake docks and then inland via your line or the North Western to destination?

A. There was a very substantial movement on the rates [fol. 834] shown on sheet 17, and these are all rail rates from the mines to the destinations.

Q. Yes, but I am asking you of the steam coal shipments up there to the industries, isn't that very largely dock coal?

A. Well, there is very little industrial steam coal moving to these destinations. It is mostly domestic.

Exam. Trezise: By rail you mean? By rail?

Mr. Wilkinson: All rail, I understood his answer.

The Witness: By rail; or from the docks by rail.

By Mr. Wilkinson:

Q. You show on pages 18 and 19, rates in Ohio. Now, isn't it a fact that, generally speaking, the rates on all commodities within Ohio are on a slightly higher level than the rates on all commodities within Illinois Freight Traffic territory?

A. I couldn't answer that, Mr. Wilkinson. I am not familiar with it.

Q. So the only thing that appears from pages 18 and 19 is a rate for a certain distance, and you are not trying to compare anything else there with our rates in Illinois and Indiana?

A. It is to show that the rates that we are proposing are still what might be termed the lowest in the country.

Q. But that doesn't, in your opinion, necessarily make the rates too low in this territory, does it?

A. I know nothing peculiar about this territory which would justify lower rates than——

[fol. 835] Exam. Trezise: What rates too low in what territory?

Mr. Wilkinson: Well, he says this is the lowest in the entire country, and I said that might not make our rates in this territory too low or unreasonably low.

Exam. Trezise: You mean the proposed rates?

Mr. Wilkinson: Yes.

Exam. Trezise: Proposed rates. Thank you.

By Mr. Wilkinson:

Q. Do you have any idea, Mr. Kuhls, as to what proportion of the production of Illinois or of Indiana goes into the territory that is involved in this proceeding? I am referring to page 20, where you show production of the two states.

A. Well, we don't have the complete movement to this whole territory. We have it for——

Q. 1941?

A. No, we have it for individual destinations, as shown in Robertson's Exhibit 4, Section VIII, but that would only give you a part of the picture.

Q. Yes.

A. You couldn't form an estimate of the tonnage moving to the entire affected territory.

By Exam. Trezise:

Q. And the points involved in this proceeding, are you now talking about the destinations in Northern Illinois only?

A. Yes.

[fol. 836] Q. That is what you have in mind when you said "in this proceeding"?

Mr. Wilkinson: Yes.

The Witness: Yes.

Exam. Trezise: Thank you.

By Mr. Wilkinson:

Q. Now, will you refer to page 21 of your Exhibit 12, Mr. Kuhls. You show certain firms, manufacturers, using

coal from Indiana, Illinois or Kentucky. What period does this exhibit cover?

A. The information was obtained in February and March of this year and covered the current purchase or consumption.

Q. As of February and March of 1943?

A. That is right.

Q. It doesn't necessarily mean that they invariably use coal from Illinois at the Anderson Metal Products Company at Rockford?

A. No, at that particular time they were using the coal indicated.

Q. And they might at some other time use Indiana coal or West Kentucky coal?

A. That is right.

Q. And that is true of all these companies?

A. That is right.

Q. As a matter of fact, some of these companies, to your knowledge, use coal from all three sources, do they not, [fol. 837] West Kentucky, Illinois, Indiana?

A. Well, sheet 11 shows, for example, a firm at Rockford using both Indiana and Illinois coal during February and March, and there is one at Beloit that used coal from Indiana, Illinois and Kentucky.

Q. That was concurrently?

A. Yes.

Q. But I say others of them use one and then another, just depending on the price?

A. I think so.

Mr. Vesey: I object to that, unless he knows. I move that that answer be stricken unless the witness states that he knows that to be the fact. I don't care about what he thinks.

The Witness: Well, I know of industries on the Milwaukee Railroad to which we haul coal from mines on our line in Indiana for certain periods of the year and then other periods we handle the coal from connecting lines, coal that originates in Illinois.

By Exam. Trezise:

Q. You know that much?

A. Oh, yes, yes.

Exam. Trezise: We will let it stand, then.

By Mr. Wilkinson:

Q. Now, in your Exhibit No. 12 you showed some percentages of 23922 scale from Southern Illinois to a number of destinations which had hauls in excess of 300 miles. In your Exhibit No. 13, where you show that scale, it does not [fol. 838] exceed 300 miles.

A. Yes, we should have shown that the scale was extended beyond 300 miles at a 5 cent—no, at an 8 cent rate of progression for each 25-mile block beyond 300.

Q. And that is the way you did it, to arrive at the percentage of such scale which you show, for example, on page 9 of Exhibit 12?

A. Yes, sir.

Q. You follow it out, then, or you did on the 23130 scale, of extending it at the same rate of progression 7 cents per block?

A. Yes, sir.

Q. Beyond the 100 miles of the scale provided by the Commission's order?

A. That is right.

Q. Now, the Docket 23130 scale, was it ever applied to the creation of rates into the part of Illinois to which the 23922 scale was promulgated for application or to create rates?

A. It was not prescribed for the same territory but the railroads have voluntarily reduced the rates within Illinois to basis of the 23130 scale in the territory to which the 23922 scale was prescribed.

Q. And the 23922 scale, I understood you to say, was to enable the Indiana shippers to ship into that Eastern-Central part of Illinois in competition with Illinois producers?

A. That is what the Commission stated.

[fol. 839] Q. To meet that competition?

A. That is right.

Q. In there. And is it universally only 5 cents higher than the minimum scale prescribed in 23130?

A. Yes, to the extent that the——

Q. Up to that 100 miles?

A. —that the distances are comparable, yes.

Q. I see. I assume that these figures that appear on Exhibit No. 13 are the scales as promulgated by the Com-

mission plus the general advances that have been authorized by the Commission since the date of their promulgation?

A. Yes. The heading says "Including Ex Parte 115 increase but not including Ex Parte 148."

Q. Is this Ex Parte 148 the one that was suspended by the Commission?

A. That is right.

Q. About thirty days ago?

A. That is not included.

Q. In your Exhibit 14 you show Fulton County as one of the origins that is not in the differential rate adjustment.

A. No, I said individual points not assigned to any particular group; also Fulton County.

Q. Oh, also Fulton County?

A. Yes, sir.

Q. Now, these mileages and rates from Fulton County, [fol. 840] do you consider that as separate from what we sometimes term the Fulton-Peoria Group?

A. Yes, Peoria is shown separate from Fulton County in Exhibit 14.

Q. Well, Peoria is not shown in Exhibit 14?

A. Yes, line 5, you notice.

Q. Oh, I see.

A. Line 5; 13, 21, 29.

Q. So they are not grouped together in this territory generally, going into this affected territory generally?

A. No, sir.

Mr. Wilkinson: That is all. Thank you.

Exam. Trezise: We will adjourn until two o'clock.

(At 12:30 p. m., recess taken to 2:00 o'clock, p. m.)

[fol. 841] Afternoon Session

The hearing was resumed pursuant to recess.

2:00 o'clock P. M.

Exam. Trezise: All right, gentlemen, when you are ready, let's continue.

W. H. KUHLS resumed:

Examination.

By Exam. Trezise:

Q. Mr. Kuhls, your line does not propose increased rates on the short haul. The Milwaukee does not have any short-haul rates, do you?

A. No, we do not.

Q. I was about to ask you if, in those short-haul rates, you do know this, that the rates that are proposed here are really less than the rates under the Illinois scale?

A. I know that, yes. We are a party, of course, to the proposed rates from the short-haul origins to our destinations, but I didn't intend to testify concerning them.

Q. Well, what I had in mind particularly, the list of points from the Northern Illinois Group, you do not publish any of those rates, do you, the Milwaukee does not?

A. We publish some for account of connecting lines. The mines on connecting lines are shown in our tariff to our destinations. We actually publish the rates but we don't control them.

Q. Well, is it your thought that the increased or proposed [fol. 842] rates for those short hauls should be increased to the basis of the minimum rates prescribed by the Commission in 23130?

A. No, we don't propose anything different than we have already published and now under suspension. They should be increased the amounts that we have already published. We are not asking that they be made higher.

Q. Well, do you mean this, that in 23130 the short-haul rates were prescribed between particular points and these points here are different points and therefore the minimum finding in 23130 would not be applicable to the short-haul rates that are here exhibited?

A. That is correct. The rates prescribed in 23130 were between particular points which are not involved in these proceedings.

Mr. Vesey: In the interest of saving time, will the Examiner explore that to get the witness' several reasons why he is of that opinion; so that it may all be in the record at one point?

Exam. Trezise: Well, ask him.

Mr. Vesey: I mean if he is of that opinion which he just expressed to you, I would like to know the reasons which cause him to be of that opinion.

The Witness: I don't know that I expressed any opinion.

By Exam. Trezise:

Q. Well, I think Mr. Vesey wants to know whether you want to express yourself and give your opinion as to why the proposed short haul rates should be lower than the [fol. 843] minimum short haul rates prescribed by the Commission in 23130 in the same general territory. Perhaps you are not the witness to answer that, but if you can contribute something to our fund of information on that subject, we would appreciate it.

A. I didn't come prepared to discuss that feature.

Exam. Trezise: That is all right.

Mr. Cardy: Just one question.

Cross-examination (Continued).

By Mr. Cardy:

Q. Mr. Kuhls, there are a great many of the rates from the mines in Northern Illinois to adjacent territory that are substantially higher than 23130, are there not, and there are relatively few rates that are on a lower basis. I understood you to say that they were practically all lower than the 23130 scale. I just wanted you to qualify your answer. I didn't want to let that statement go unchallenged.

A. The average of the suspended rates as shown on Exhibit 14 is 81.2 per cent of the 23130 scale from Rushville.

Q. Well, that is only the twelve, fourteen typical points you have taken. Those are the lowest points you could find in the territory, isn't that true? If you will just say some

of them are higher and some of them are lower, I will be satisfied with your answer.

A. That is shown by Exhibit 14; some are higher and some are lower.

By Exam. Trezise:

Q. Could you be a little more specific and would you be [fol. 844] able to say that from the Northern Illinois Group, from the points that are named in the Northern Illinois territory there to the twelve destinations, out of that number there are seventeen, you know that there are seventeen of those rates that you propose are less than the rates under 23130?

A. Well, there are 72 rates that average less than 100 per cent and 12 that average over 100 per cent of the 23130 scale.

Q. My question that I asked probably was not as clear as it should have been. It should have been that out of 168 rates, that is figuring the rates from each one of these 14 points named in Northern Illinois to the 12 destinations, that would be 168 rates, 17 of them, I should have asked you if you knew that 17 of them were lower than——

A. No, when I made that answer I took the rates shown on Exhibit 14. There are 84 rates on Exhibit 14, 12 destinations and 6 origins, making a total of 72 rates; and from five of the origins or six of the origins the rates averaged less than 100 per cent and only the Atkinson rates averaged more than 100 per cent. Now, I haven't made a study of the 14 origins that you refer to so I couldn't answer your question.

Exam. Trezise: Do we have come further questions now of Mr. Kuhls?

Mr. Bather: Yes, I have some, Mr. Examiner.

Exam. Trezise: Mr. Bather.

By Mr. Bather:

Q. Mr. Kuhls, on pages 1 to 7 of your Exhibit 12, where [fol. 845] you show comparisons of rates from Fulton County and the Southern Illinois District to Iowa, is it your contention that the rates from Illinois, Indiana and West Kentucky to Rockford should be predicated upon the basis from Illinois to Iowa points?

A. No, that isn't our position and the rates that we have published are much lower than the level.

Q. What is the purpose of that part of your exhibit?

A. To show what the Commission has prescribed to adjoining territory.

Q. Do you consider Iowa adjoining territory in so far as the coal adjustment in Illinois is concerned?

A. Yes, I don't see much difference in the two territories.

Q. Are the transportation conditions and the volume of the traffic the same?

A. Oh, the volume of traffic to Iowa is much heavier than it is to Rockford, Northern Illinois.

Q. I am using Rockford as typical of the destination territory involved in this proceeding.

A. The movement to Iowa is much heavier than the entire destination territory.

Q. From what origin?

A. Illinois, Indiana.

Q. Can you give me approximately the volume of tonnage into Iowa as compared with the volume of tonnage into the [fol. 846] territory affected?

A. Exhibit No. 10 shows the movement of coal from Illinois to the State of Iowa for the years 1932 to 1941, but the only thing in the record that we have on the Illinois movement is to representative points shown in Exhibit 4, Section VIII; and of course the movement to Northern Illinois is heavier than just to those representative points; but from my knowledge of coal movement, the tonnage to Iowa is much greater than to Northern Illinois.

Q. How much greater?

A. I would say three or four times.

Q. How much?

A. Three or four times greater.

Q. Now, on page 11 of your exhibit you show comparison of the rates from the Springfield group to Rockford, compared with the Brazil-Clinton, Indiana group to Rockford, and when I say "Rockford" I mean Rockford and related points. Now, you voluntarily several years ago reduced your rate from the Brazil-Clinton District to Rockford 17 cents a ton?

A. That is right.

Q. Or from $1.97 to $1.80. Were you satisfied with that rate at that time?

A. It was reduced from $1.87 to $1.70.

Q. That is true.

A. And we were satisfied that we would have to publish [fol. 847] that rate to continue to haul coal to Rockford.

Q. You felt that that rate was compensatory for the service rendered?

A. Well, it was more than a compensatory rate but less than a reasonable maximum rate.

Q. It was more than a compensatory rate?

A. Yes, it was somewhat more than a compensatory rate, a minimum rate, but it was not a maximum rate.

Q. And you made the same reduction from the Linton-Sullivan Group as you made from the Brazil-Clinton Group to Rockford and Freeport?

A. No, we reduced Linton-Sullivan 12 cents. We increased the differential between Brazil-Clinton and Linton-Sullivan from 5 to 10, which meant a 17 cent reduction from Brazil and a 12 cent reduction from Linton.

Q. Now, as you go south from the Princeton group, is your rate the same from Enosville, for example, to Rockford as the rate via other lines serving Rockford?

A. No, our rate from Enosville is higher.

Q. Your rate is higher?

A. Than the rate of the Illinois Central, yes.

Q. So that where you have a lower rate from the Northern Indiana Groups to Rockford, you have a higher rate from the Southern Indiana Groups to Rockford?

A. That is right. It should be understood that the origin [fol. 848] you are talking about is on the Algers, Winslow & Western Railway and not on the standard Princeton lines.

Q. Well, from Oakland City, Indiana, doesn't the same situation apply?

A. No, Oakland City is on the so-called standard lines, and we have the same rate from Oakland City.

Q. Now, on page 13 of your exhibit, where you make comparisons of rates or ratings, rather, on various commodities, what is the purpose of that exhibit?

A. The purpose is to show the class rate level of commodities upon which the Commission prescribed commodity rates in lieu of class rates.

Q. How does the volume of tonnage of these commodities compare with the volume of tonnage of coal?

A. I couldn't say.

Q. Now, you show a comparison here which is more specific than anything else on the page on scrap iron where you have a basis of 12½ per cent of the first class rate on a minimum weight of 75,000 pounds; taking Herrin for example, where the first class rate would be 98 cents on a minimum car of 37½ tons, on which your revenue would be $90.00 as compared with the present revenue from Herrin to Rockford on a $2.10 rate on a 50 ton car of coal of $105. Do you think that is a fair comparison and do you think it justifies an increase in the rate on coal?

[fol. 849] A. You are taking the minimum on scrap iron and the maximum on coal.

Q. No, I am not. I am taking 50 tons; that is not a maximum at all.

A. Coal can be shipped in box cars at 25 tons and still take the same rates——

Q. To what extent is coal shipped in box cars in the State of Illinois?

A. Not to a very great extent.

Q. Is it shipped to Rockford in Box cars at all?

A. My attention hasn't been called to any movement.

Q. Do you know what the value of a carload of scrap iron is compared to the value of a carload of coal?

A. I think the OPA maximum price is about $18.50 a ton on scrap iron.

Q. What is it on coal, Illinois coal?

A. Depending on the size. It runs up to——

Q. Take the maximum. I don't care how high you go on it.

A. I don't know what the maximum is. $3.75, $4.00, something like that.

Q. At the mine?

A. Yes.

Q. So that you believe that comparison is a fair one in so far as the transportation cost of coal is concerned as compared with the transportation costs of a carload of scrap iron?

[fol. 850] A. No, but I stated when I offered this page that the commodities represented a cross section from a minimum to a maximum. You have to take the whole page rather than picking out one single point.

Q. As a matter of fact, the comparisons made with these other commodities would not have much bearing upon the reasonableness of the rate on coal, would it?

A. I think it shows comparative levels of commodities general with the coal rates here in issue. I think it has some use in this proceeding.

Q. Well, take Guano, for example. What is the extent of movement of Guano in the State of Illinois?

A. Probably none.

Q. Then on page 15 of your Exhibit 12, where you make a comparison with the first class rates for the rates on coal. Are the rates now or have they ever been, the rates on coal, now or have they ever been related in any way to the first class rate?

A. Not these rates, no.

Q. Have any rates on coal been related to the first class rates?

A. Yes, sheet 13 shows ground coal.

Q. Now, let's confine ourselves to steam coal, for example, not ground coal or processed coal. Let's take coal used for industrial purposes.

A. Ground coal is used in industrial purposes.

[fol. 851] Q. Well, I am talking about steam coal.

A. That is right.

Q. I am talking about steam coal, coal that is put under a boiler to generate steam. Is there any relation of the rates of that kind of coal to the first class rate?

A. I believe not.

Q. And there never has been, has there?

A. I don't think so.

Q. I believe you testified previously that the class rates are mileage rates?

A. That is right.

Q. And they were fixed by the Commission?

A. Yes, sir.

Q. And while the rates on coal generally, the territory involved in these proceedings, are group rates——

A. Yes.

Q. —they have no definite relation to mileage at all?

A. Well, they have some relation to mileage but they are not on the mileage basis.

Q. But they are not fixed with definition relation to the distance of the haul?

A. In Northern Illinois, no, they have never been fixed.

Q. Now, on sheet 18, where you show rates and rate comparisons within the State of Ohio, practically all of the rates shown are for short hauls, aren't they?

[fol. 852] A. There are a good many for short hauls and there are a good many for long hauls.

Q. In other words, your distance ranges from 11 miles up to 202 miles?

A. The one on sheet 19, 307.4.

Q. Sheet 18, I am speaking of.

A. Oh, sheet 18; pardon me. Yes, that is right.

Q. Do you think that is a fair comparison with the rates involved in these proceedings?

A. Oh, you have rates in these proceedings for 40 miles, 50 miles.

Q. You haven't got any, though, for 11-mile hauls, have you?

A. Well, there is only one rate here for 11 miles.

Q. Do you participate in the rate on coal from Wilmington to Rockford?

A. We do.

Q. That is a relatively short haul, isn't it?

A. It is a short haul but it is a group rate.

Q. It is in the Northern Illinois group?

A. Yes, sir.

Q. Now, on sheet 21, where you show a list of industries, Freeport, Rockford and other points, from what source did you get that information?

A. Personal investigation and reports from agents at the destinations.

[fol. 853] Q. How much coal does the Anderson Metal Products Company consume per year?

A. We didn't compare the tonnage.

Q. Or Nelson J. Bilstrom?

A. We didn't develop the amount of tonnage that any of these concerns consumed.

Q. As I understood your testimony, this information was obtained in February and March of this year?

A. That is right.

Q. Do you know that the West End Furniture Company has been out of business for three years?

A. No, I didn't know that.

Q. You show them in the list here, that is why I asked that question.

A. Well, the report I have includes the West End Furniture Company. It is dated February 27. I just assumed that they were still in existence.

Q. In other words, you have no personal knowledge of the industries listed here or where they obtain their coal?

A. Oh, yes, I see it on our so-called passing reports every day. It originates in Indiana.

Q. Did you check those against this list?

A. No.

Q. I also recall that you testified that you did not show public utilities in the list of industries receiving coal at these points?

[fol. 854] A. Yes, I thought I eliminated the utilities.

Q. Why did you do that?

A. Why, I didn't think they competed to the same extent that manufacturing industries did.

Q. Do you know how much coal the Central Electric & Gas Company received at Rockford for a year?

A. Several hundred thousand tons.

Q. And do you now where that coal comes from?

A. For the electric plant it comes from Rockford and for the gas plant it comes from West Virginia.

Q. Who handles that coal?

A. The Milwaukee Railroad.

Q. And what is the origin point of the Illinois coal that comes into Rockford for that company?

A. West Clinton.

Q. Do you know what the tonnage amounted to for the year 1942?

A. It was quite substantial; around 200,000 tons, I think.

Mr. Bather: That is all.

Exam. Trezise: Do we have further questions?

Mr. Wilkinson: Let me ask one right there:

By Mr. Wilkinson:

Q. West Clinton is an origin point on the Milwaukee road, in the Clinton District, isn't it?

A. Yes, sir.

By Mr. Binkley:

Q. Mr. Kuhls, you compared the volume of movement from Southern Illinois mines to Rockford area into Iowa. You were referring to the whole State of Iowa?

[fol. 855] A. Yes, in response to a question Mr. Bather asked which included the State of Iowa.

Q. The whole State of Iowa?

Mr. Bather: I asked that question because his exhibit showed the whole State of Iowa.

Mr. Binkley: That is all.

Mr. Stadell: I have a few questions.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. You were asked a number of questions, Mr. Kuhls, concerning the difference in the rates to Rockford and Freeport from mines on the Milwaukee as compared to the rates from mines on other railroads in that group to those destinations, and I would like to have you briefly review the history surrounding that rate reduction and the increased rates you are proposing here from Illinois mines. Am I correct that the reduction of 17 cents per ton which has been referred to at numerous points in this proceeding as having been made by the Illinois Commerce Commission and the rates from the Southern Illinois and certain other Illinois groups to Rockford was established in about 1930, 1931?

Mr. Bather: 1932.

By Mr. Stadell:

Q. 1932?

A. August 20, 1930.

Q. What year?

A. 1930.

[fol. 856] Q. 1930?

A. Yes, sir.

Q. That is when the reduced rate became effective from those Illinois groups to Rockford and Freeport?

A. Yes, sir.

Q. Now, following the establishment of those reduced rates in compliance with the order of the Illinois Commerce Commission, the railroads serving the Illinois-Indiana mines filed a thirteenth section petition with the Interstate Commerce Commission, and in conformity with the request in that petition, the Commission instituted a thirteenth section investigation concerning the rates, intrastate rates

from the Illinois mines to those Northern Illinois points to see if they could be increased back to their former level, because it was alleged that they violated Section 13 of the Act.

A. Yes, that was Docket 23130.

Q. And did or did not the Commission grant that petition and require the Illinois rates to be increased back to their former level?

A. They did not.

Q. And was the reason for that, reason for the refusal, as stated by them to be the fact that while these rates from the Illinois mines to Rockford and Freeport were on possibly a low level, that the railroads were voluntarily maintaining still lower rates interstate from the Indiana mines [fol. 857] to the same Northern Illinois destinations?

Mr. Wilkinson: I want to object to that question, Mr. Examiner. The question involves—is it a fact that the rates were so and so, or is that the fact that the Commission stated in its decision.

Exam. Trezise: Confine it, if you want to, did the Commission state that in the decision?

By Mr. Stadell:

Q. As a fact?

A. No, not in those words or terms. They did not say the rates from the Indiana mines. They referred to certain low rates from Indiana. Your question would assume that it referred to all the rates in Indiana, whereas the Commission referred to low rates in Indiana.

Q. Well, that was the reason the Commission refused to increase the rates from the Illinois mines under the 13th section petition, was because of the maintenance of those lower rates from Indiana, isn't that true?

Mr. Wilkinson: The Commission's decision speaks for itself.

Exam. Trezise: The Commission said that in its report, page 550, yes.

Mr. Stadell: What is the witness' answer?

The Witness: That is right: I thought I answered before.

Exam. Trezise: That doesn't make any difference, what is said about that. The Commission said that.

[fol. 858] Mr. Stadell: Well, he has testified about all the history of these things in answer to the alleged cross

examination of Mr. Wilkinson. I thought I might be able to get if clear here so I could lay the foundation for a group of questions.

By Mr. Stadell:

Q. Now, following that decision of the Commission, did the railroads increase the so-called lower rates from Indiana, or did they reduce some of them?

A. The Milwaukee railroad attempted to reduce their rates.

Q. They attempted to?

A. Yes.

Q. And the Interstate Commerce Commission suspended those rates and found them not justified, didn't they?

A. Yes, sir.

Q. And that case was appealed to the Supreme Court and the Supreme Court overturned the Commission's decision on the grounds that the Commission's order was not supported by any finding?

Mr. Wilkinson: I object to the witness giving the contents of the Supreme Court's decision. That decision will speak for itself.

Exam. Trezise: Let's assume that is true, yes.

By Mr. Stadell:

Q. You said they attempted to reduce the rates 17 cents per ton from the Milwaukee mines in the Brazil-Clinton and Linton-Sullivan District. They not only attempted to reduce them but they did do that and made them effective [fol. 859] from about 1934, didn't they?

A. Following the order, we attempted to do it and didn't succeed but lately.

Q. You did succeed?

A. From the Supreme Court decisions.

Q. And those reduced rates from the Brazil-Clinton and the Linton-Sullivan District to Rockford, Freeport and other Illinois territory are in effect today, are they not?

A. Yes, sir.

Q. And in this proceeding, the Milwaukee railroad is not proposing to restore that 17 cents reduction but they are merely proposing to increase those reduced rates 15 cents a ton, is that correct?

A. That is right.

Mr. Vesey: So I can follow this, that doesn't mean that their proposed rate is two cents lower than the 23130 rate at the time it was decided?

Mr. Stadell: Yes, that is right; from the Milwaukee mines, in the Brazil-Clinton Linton-Sullivan District.

By Mr. Stadell:

Q. Is that correct, Mr. Kuhls?

A. No.

Mr. Stadell: I see Mr. Scott shaking his *his* head. I think Mr. Kuhls can take care of himself.

Mr. Scott: I didn't mean that for Mr. Kuhls.

The Witness: Mr. Stadell, I said no to Mr. Vesey's ques-[fol. 860] tion because he referred to 23130 rates.

Mr. Stadell: Mr. Vesey, just to get the record straight——

By Mr. Vesey:

Q. What I mean, the rates were in effect at that particular time, at the time of that decision?

A. Yes.

Q. In other words, you went down 17; you are going back up 15, the way I add up. Maybe that is the wrong figures but it looked to me like there was two cents difference.

Mr. Cardy: It depends on which origin you are talking about.

Mr. Bather: In other words, what they did, they took 17 cents off the rate and they now want to put 15 cents back on.

Mr. Kaier: Would you say that was two cents difference?

Mr. Bather: I would.

Exam. Trezise: Go ahead.

Mr. Cardy: To get that straight——

Mr. Stadell: Suppose you cross examine the witness after I get through.

By Mr. Cardy:

Q. Mr. Kuhls, in the Brazil-Clinton District you reduced it 17 cents, from $1.97 to $1.80, isn't that true, 17 cents difference?

A. Mr. Cardy, we are treating Brazil-Clinton exactly the same way that Springfield, Illinois, was treated.

Q. I don't care about that, but from the Sullivan-Linton you have a rate of $3.02 and you reduced it to $1.90, ac-
[fol. 861] cording to this statement here, is that correct?

A. That is correct.

Mr. Cardy: All right.

By Mr. Stadell:

Q. Now, I understood, in answer to the questions that you made to Wilkinson and the Examiner, that you thought that there was no reason why the rates from all mines in the Brazil-Clinton group, Rockford and Freeport, or from all mines in the Linton-Sullivan group to those destinations should not be the same.

A. Yes, I said that.

Q. And today the rates from the Milwaukee mines to those destinations are 17 cents per ton lower than the rates from the mines on the other railroads in those two groups.

A. 17 and 12.

Q. 17 cents per ton lower from Brazil-Clinton and 12 cents per ton lower from Linton-Sullivan.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, the Milwaukee having no objection to the parity of rates being established from all mines in those two groups to those destinations, how do you want the Commission to accomplish that? By reducing the rates from the mines on the other railroads or by increasing the rates from the Milwaukee mines?

A. Well, there isn't any particular way that I want them
[fol. 862] to do it, but, from the evidence on the record, it should seem to me they would have to accomplish it by reducing the higher rates instead of increasing the lower rates.

Q. You mean that the Milwaukee railroad have no objection to the Commission accomplishing that parity by increasing the present rates the additional 17 and 12 cents a ton from the Milwaukee mines to those destinations?

A. Will you repeat that, please?

Exam. Trezise: Read the question.

(Question read.)

The Witness: They couldn't do that under the record, no.

By Mr. Stadell:

Q. Why couldn't they?

A. Well, it shows that the mileage from Brazil-Clinton is less than it is from Springfield. How could they——

Q. You think that mileage is important? You think that should determine what the rate should be from these various groups?

A. I am beginning to think nothing is important.

Q. You said that because the mileage was the same that the rate should be the same. Is that the theory on which you think the Commission should proceed in this case?

A. That is one thing, the distance, and then the history of the adjustment. The conclusion is inescapable that the two groups should be on a parity.

By Exam. Trezise:

Q. When you say the two groups, you mean that the rates of the Milwaukee and the rates of the other carriers [fol. 863] should be the same from the Brazil-Clinton Group?

A. Should be the same as Springfield.

Q. All right; the same as Springfield. But there should be one rate from the Brazil-Clinton Group?

A. One rate from the Brazil-Clinton Group, and that should be the same as Springfield.

Mr. Hunter: Excuse me.

By Mr. Hunter:

Q. Mr. Kuhls, did I understand that you are comparing the Brazil-Clinton field and the Springfield group when you say the rates of the two groups should be on a parity?

A. That is right.

Mr. Hunter: I wasn't sure. Thank you.

By Mr. Stadell:

Q. And you think that the only way that could be accomplished here is by reducing the rates from the mines in the Brazil-Clinton and Linton-Sullivan on the other

railroads down to the basis in effect from the Milwaukee mines, is that correct?

A. We are not proposing that, Mr. Stadell.

Q. I know you are not proposing it, but you said, as I understood you, that is the only way the Commission could accomplish it here on the evidence in this record. I want to know if that is your answer.

A. If that was what the Commission decided to do, that would be the way to do it.

By Exam. Trezise:

Q. I think Mr. Stadell wants to know what guidance could [fol. 864] you give the Commission in their proceeding to handle the situation? Distance would be the paramount factor?

A. I mentioned two: distance and past history; and I presume there will be commercial testimony in the case which might justify that from a commercial standpoint. But as far as I am concerned, it would be distance and history; distance and history.

Q. What has been should be, is that what you mean? When you say "history", I am not sure that I know what you mean.

A. Well, we have a rate history here showing that there was a parity between Brazil-Clinton back to 1913. Prior to that time, Brazil-Clinton was lower than Springfield. That is the history. And the distance feature is that the average mileage from the Brazil-Clinton group is less than from Springfield.

Mr. Bather: To where?

By Exam. Trezise:

Q. Well, it is so trivial, though, that it is inconsequential, isn't it, to these destinations; only a few miles?

A. Well, being a few miles less, the rate shouldn't be 17 cents more.

Exam. Trezise: Go ahead, Mr. Stadell.

By Mr. Stadell:

Q. Now, will you answer my question as to whether the Milwaukee railroad, you being the coal traffic manager and I presume an executive having charge of the rates on coal from mines on the Milwaukee, would they have any ob-

[fol. 865] jection to the Commission accomplishing this parity which you said should exist from the Brazil-Clinton and Linton-Sullivan mines to Rockford and Freeport by in-reasing the rates from the mines on your line to those destinations rather than reducing the rates from the other railroads' mines in that district?

Mr. Hunter: I suggest he has answered that several times.

Mr. Stadell: I would like to have an answer to that.

The Witness: I said it should be done by reducing the higher rates.

By Mr. Stadell:

Q. You would object, then, to the Commission doing it by increasing the rates from the Milwaukee mines to those destinations?

A. Right.

Q. So what you are, in substance, proposing here is not an increase in the rates from the mines in the Brazil-Clinton and Linton-Sullivan Districts to Rockford, Freeport and most of the other points involved on railroads other than the Milwaukee, but a reduction, is that correct?

A. Reduction from certain mines.

Q. Well, it is a reduction in the present rates from all mines in those two groups on railroads other than the Milwaukee, is it not?

A. Yes, sir.

Q. Now, referring to your Exhibit No. 13, you show on there certain mileage scales, the Holmes-and Hallowell Scale, 23130 scale and the 23922 scale. Now, I under-[fol. 866] stood you to say that the 23130 scale was prescribed by the Interstate Commerce Commission for application in Illinois as a minimum scale.

A. Within a certain territory, yes, sir.

Q. They prescribed it as a minimum scale from Illinois mines to certain destinations in Illinois?

A. Yes, sir.

Q. And it is your view that any rates below that scale would be below a minimum reasonable basis?

A. No, not necessarily; at least they would not be above a reasonable maximum basis.

Q. Well, if it is a minimum scale and the rate was below that scale, why wouldn't it be below a reasonable minimum basis?

A. We have a different territory; longer hauls, on an average.

Q. Is it not a minimum scale?

A. I understood it was. It was prescribed in the 13th section case.

Q. For what distance was that scale prescribed?

A. 100 miles.

Q. And you had extended it up to what, 300 miles?

A. Yes, sir.

Q. On your Exhibit 13?

A. Yes, sir.

Q. And you feel that that would be proper to measure rates, for example, from Illinois groups for 300 miles?

[fol. 867] A. No, sir.

Q. Why did you extend it on your exhibit to 300 miles?

A. In my direct testimony I didn't mention it.

Q. Isn't your exhibit part of your presentation, your evidence?

A. It is in the record but I didn't make any comparison, the suspended rates with the 23130. I made the comparison between the suspended rates and the 23922 scale.

Q. Well, the 23922 scale is five cents per ton higher than the 23130 scale, is that it?

A. Yes, sir.

Q. And that five cents per ton difference is due to the fact that the mileages under the 23922 scale are figured over the shortest possible routes, and under the 23130 scale over the average of short tariff routes, is that correct?

Mr. Wilkinson: I object to that question.

The Witness: No.

Mr. Wilkinson: Just a minute. That is getting into the Commission's decisions again and interpreting those decisions.

Mr. Stadell: Here is a witness, Mr. Examiner, supposed to be an expert witness. He has put an exhibit in here showing certain mileage scales. Now, I presume that he knows something about it.

Exam. Trezise: He does.

Mr. Stadell: I hope I can get an answer to that question, then. As a matter of fact, I don't know what question you

[fol. 868] objected to. As a matter of fact, he testified about it in direct testimony and I think he testified about it in answer to some of Mr. Wilkinson's questions.

Mr. Wilkinson: The witness testified, Mr. Examiner, on his direct that the 23——

Mr. Stadell: I object to his stating what he testified to. I think the record will show what he testified to.

Exam. Trezise: Then let's settle it all by having the question asked here. Do you want to reframe it or——

Mr. Stadell: No, I think the question is clear. Let the reporter read the question.

Exam. Trezise: Let's go back and read Mr. Stadell's question.

(Previous question read.)

The Witness: I answered the question. I don't know whether she has it or not.

Exam. Trezise: Well, he answered and you objected after he answered it.

Mr. Wilkinson: No, I objected first and then he answered it. It doesn't make any difference.

Exam. Trezise: All right, let's pass on.

By Mr. Stadell:

Q. Your answer was no?

A. Yes, sir.

Q. Then I will ask you, then, if it isn't a fact that the Commission first prescribed the 23922 scale for application [fol. 869] to distances over the average of short tariff routes in 185 I. C. C.?

Mr. Cardy: Mr. Stadell, is that between specific points or generally as a scale?

Mr. Stadell: Generally as a scale.

The Witness: Mr. Stadell, if I may, I can shorten this up by repeating my direct testimony. I said that so far as the two scales were comparable in the distances prescribed by the Commission, the mileages were figured the same but over——

By Mr. Stadell:

Q. You mean up to 130 miles. Yes, all right.

A. But over 130 miles, I said that the Indiana scale, 23922, was figured via shortest routes.

Q. Shortest possible routes?

A. Shortest possible routes.

Q. All right, let's come back to my last question, now. I asked you if the Commission, the Interstate Commerce Commission did not, in its first decision in the 23922 case, prescribe the scale in that case for application to distances over the average of short tariff routes?

A. In the first decision, yes.

Q. And then they reopened the case and in 190 I. C. C. they prescribed the scale which you show on your exhibit and which is five cents per ton higher than the original scale to apply to distances computed over the shortest possible routes?

A. That is right.

[fol. 870] Q. And the reason for the five cent increase in the scale was due to the difference in the method of computing the distance?

A. That is also correct.

Q. And for distances up to 130 miles, which was the distance for which the 23130 scale was prescribed, the 23922 scale is five cents per ton higher than the 23130 scale, is that right?

A. Yes, sir.

Q. Now, you say that you do not think that the 23130 scale is proper to use in measuring the present or suspended rates from the Illinois mines to the Northern Illinois points involved in this case.

A. I said that because it isn't proper, in my opinion, to progress the scale that ends at 100 miles at the same rate of progression that is effected by the large mileage block, because if you extend it far enough, the rates become out of proportion to the other scales prescribed by the Commission.

Q. What significance are we or the Commission to attach to the scale as shown in your Exhibit 13, 23130 scale, for distances of more than 130 miles or beyond 130 miles?

A. Well, I would say, to be frank, none.

Q. It might just as well be stricken from the exhibit?

A. Over 130 miles, yes.

Q. Now, the 23922 scale being but five cents per ton higher than the 23130 scale and the 23130 scale being, as you said, a minimum scale, would you say that the 23922 scale was

[fol. 871] but five cents per ton higher than the minimum scale?

A. Yes, but I stated before we were talking about different territories, now, and longer hauls, and group rates.

Q. Well, your 23922 scale was prescribed for distances up to 300 miles, was it not?

A. Yes. We are not asking the Commission to approve rates based on 100 per cent of 23922. We merely show it to demonstrate the lowness of the suspended rates.

Q. Would you say that a rate more than five cents per ton lower than the 23922 scale would be below a minimum reasonable basis?

A. No, I don't think so. There is quite a spread between minimum and maximum reasonable rates and I would say it would be a reasonable rate, it could vary considerably and still be a reasonable rate.

Q. How much could it vary from the 23922 scale and still be a reasonable rate; 40 cents?

A. I haven't given any thought to that. I would want to give it a little study before I answered.

Q. Don't you think it is important in this case, where the railroads are proposing to increase rates and you are using these scales as yardsticks, don't you think the Commission ought to know what the differential might be?

A. Well, anywhere between 80.7 per cent and 88.6 per cent in Southern Illinois and between 78.9 per cent and [fol. 872] 103.1 per cent in Fulton County with related rates in the other groups.

Q. The average distance from the Brazil-Clinton District to Freeport is what, how many miles?

A. From the Linton District to Freeport?

Q. Yes, Brazil-Clinton.

A. The average from all mines from the group is 287 miles.

Q. And your present rate is $1.80. The distance for the $1.80 rate—the average from the group is 287?

A. Yes.

Q. And the present rate from the Milwaukee mines is $1.80?

A. But not that mileage.

Q. The present rate from the Milwaukee mines is $1.80?

A. Yes.

Q. For the distance of 287 miles?

A. Yes.

Q. And the proposed rate from the Milwaukee mines is $1.95?

A. Yes.

Q. You were, in substance, here, proposing $1.95 for the entire group?

A. No.

Q. That is what you were talking about a while ago.

A. No, we haven't proposed that.

Q. Well, the result of your proposal, the result of your testimony——

Mr. Hunter: I object to that. The record will speak for [fol. 873] itself.

Exam. Trezise: He is not advocating it; I mean he is not proposing it but he is advocating it.

Mr. Stadell: He is not objecting to it; that is the point.

Mr. Kaier: I haven't heard him advocate it either, Mr. Examiner. I suppose he would be glad to have things remain as they are.

By Exam. Trezise:

Q. Well, Mr. Kuhls, didn't you say that you thought the rate should be the same from all the points in the Brazil-Clinton Group to, well, we will say to Freeport or Rockford? Didn't you say that? If you didn't, just say you didn't.

A. I said I didn't want to suggest to the Commision what they should do, but I thought they were capable of dealing with the situation themselves.

Q. Well, it is your mature and experienced judgment that there should be the same rate from all points in the Brazil-Clinton Group to Freeport and Rockford and those points, is that true?

A. Yes, in view of the mileage, I don't see why there shouldn't be; but I am not proposing it or advocating it.

Exam. Trezise: Neither proposing or advocating it, but you think it should be. All right. Have you that now, Mr. Stadell?

Mr. Stadell: Part of it.

By Mr. Stadell:

Q. Well, if the Commission adopts your benevolent atti- [fol. 874] tude of neutrality and makes the rate $1.95 per ton

from all mines in the Brazil-Clinton District to Freeport, that rate will apply for the average distance of 287 miles, will it not?

A. Yes, sir.

Q. Now, what rate would the 23922 scale produce for that distance?

A. It would produce $2.30.

Q. And the 23922 scale as extended, on your Exhibit No. 13, for the 287 miles, would produce a rate from Brazil-Clinton to Freeport of $2.70, would it not?

A. What scale, please?

Q. 23130?

A. No, I have disowned that 23130.

Q. You disowned it?

A. We are not using it beyond 130 miles.

Q. It is in your exhibit and I just asked you——

Mr. Hunter: I object to that. He said he disowned it, at Mr. Stadell's request.

Mr. Stadell: No, not at my request. I merely asked him a question.

Mr. Hunter: I think we shouldn't go into that. If he is not advocating the use of this scale, I don't see any point in wasting time on it, because we want to get through here some time.

[fol. 875] Mr. Stadell: We want to get through but you don't want it.

Mr. Hunter: In other words, if we don't rely on it, I don't see the point of going into it. It is entirely irrelevant.

Mr. Stadell: It is very confusing to me, Mr. Examiner, if it is irrelevant, why Mr. Kuhls put it in an exhibit.

Mr. Hunter: He has explained——

Exam. Trezise: All right, Mr. Stadell, keep on asking him why he put it in his exhibit. Go ahead.

Mr. Hunter: He has already explained it.

Exam. Trezise: Have you any further questions on that line?

Mr. Stadell: Yes.

Exam. Trezise: Go right ahead.

By Mr. Stadell:

Q. The rate for 287 miles under the 23130 scale would be $2.70, would it not?

A. No, sir.

Q. As shown on your Exhibit No. 13?

A. That is not a scale.

Q. Well, you show it on your exhibit as a scale, do you not?

Mr. Hunter: I object to his arguing with the witness.

The Witness: No, I show the scale as progressed under 100 miles.

By Mr. Stadell:

Q. As progressed under your exhibit, the rate would be [fol. 876] $2.70 for 290 miles, would it not?

A. No, the scale is non-existent.

Q. Would you say that the rate, the proposed rate from the Brazil-Clinton District to Freeport of $1.95 would be a reasonable and profitable rate, although it is 35 cents per ton lower than the rate that would be produced for that distance by the 23922 scale?

A. Freeport?

Q. Yes. You said the distance was 287 miles, the proposed rate $1.95 and the 23922 scale for that distance would produce a rate of $2.30 or 35 cents per ton higher.

A. Yes. I believe it would be reasonable, in lieu of the——

Q. And proper?

A. And proper, in lieu of the rates proposed from other groups.

Q. Now, in answer to Mr. Wilkinson's questions you stated that where the distance from Brazil-Clinton to the destinations involved were substantially the same as from Springfield, that the rate should be the same?

A. Yes, I thought so.

Q. But where you got to a point like Dixon, where the distance from Springfield was shorter than from Brazil-Clinton, that the Springfield Group should be given the benefit of its geographical location and have a lower rate?

A. No, I said the whole territory should be treated as a whole and that we were supporting the proposal as to the [fol. 877] whole territory. If Springfield is given more favorable treatment at Dixon, why, we think that Indiana should be given more favorable treatment at Belvidere, for example; but we are not proposing that. That all was in

answer to Mr. Wilkinson's question, but that is my testimony.

Q. Now, are you supporting, is the Milwaukee railroad supporting the rates under suspension here, or are you advocating something different?

A. No, I said there were a few inconsistencies, such as the higher rate from Brazil-Clinton to Belvidere than from a shorter distance from Springfield, but we are willing to go along with the entire proposal.

Q. Do I understand by that, then, that the Milwaukee railroad feels that to Belvidere the rate, that the Commission should change the rate from Brazil-Clinton and make it the same as from Springfield?

A. No, sir.

Q. The Milwaukee railroad is satisfied with the proposed rate in there of $1.95 from Springfield and $2.12 from Brazil-Clinton?

A. No, we are not satisfied.

Q. Are you contented?

A. We are willing to go along with the proposal as made.

Q. Well, you are not advocating any change in those rates, then, at Belvidere or the relationship between Springfield and Brazil-Clinton in this proceeding?

[fol. 878] A. No, as proposed; but if the Commission decides to treat those rates and places Indiana at a disadvantage at Dixon, for example, we will expect them to make the same kind of a revision at Belvidere.

Q. Now, what do you mean by disadvantage at Dixon?

A. As measured by the proposed rates.

Q. Do you feel that the proposed rates from Springfield and Brazil-Clinton to Dixon are proper?

A. For the purpose of this adjustment, yes.

Q. You are not advocating any change in the rates from those groups to Dixon?

A. No, sir.

Q. Do you know of any reason why a Brazil-Clinton Group should have the same rate to Dixon as the Springfield group, where the Brazil-Clinton mileage is 74½ miles greater?

A. You are talking about Dixon?

Q. Yes.

A. Springfield——

Q. Shown on page 11 of your Exhibit No. 12.

A. Springfield is $1.75 and Brazil-Clinton is $1.89; not the same. Brazil-Clinton is 14 cents higher.

Q. You know of no reason why that difference in rate for that difference in distance isn't proper, do you?

A. I don't see much wrong with it. The only way you could condemn it would be by putting all rates on a strict [fol. 879] mileage scale, and I don't think anyone advocates that.

Q. That would probably result in greater differences in favor of Springfield, wouldn't it?

A. It would also result in this continued litigation over coal rates, too.

Exam. Trezise: Is that all, Mr. Stadell?

Mr. Stadell: No, I have a few more questions.

By Mr. Stadell:

Q. Now, suppose the Commission should conclude that the rate from all the Brazil-Clinton mines and all the Linton-Sullivan mines on the various railroads to Rockford and Freeport should be the same as from Milwaukee mines. You stated that would result in a reduction in the present rates from the mines on the other railroads to those destinations, didn't you?

A. Yes; the present existing rates but not the relationship. It has been in effect for a great many years.

Q. It would result in a reduction of the present relationship of 17 cents a ton, wouldn't it?

A. The present rates don't reflect a relationship. The relationship was disrupted in 1930.

Q. Now, assume the Commission reduced those rates from the mines on the other railroads in the Brazil-Clinton Linton-Sullivan Districts to those destinations and put them on the Milwaukee basis. Would that, in your opinion, necessitate reductions in the rates from the Princeton and [fol. 880] Booneville district?

A. Not necessarily, no.

Q. You say it wouldn't necessarily result in reduction?

A. I did, yes.

Q. What would be the reasons why you wouldn't think that that would happen?

A. Well, it all depends on the facts and evidence that we put in the record for or against it.

Q. Well, would the Milwaukee railroad have any objection to those rates being reduced by the same amount as the rates from the mines in the Brazil-Clinton Linton-Sullivan Groups on the other railroads?

A. Well, we wouldn't object to the extent that you would want to protest it.

Mr. Cardy: What was that answer?

(Answer read.)

By Mr. Stadell:

Q. You mean you would present no active opposition to it?

A. That would be through Interstate Commerce Commission action and if they felt that was the thing to do, I don't know why we would interpose much objection to it.

Q. Now, have you Robertson's Exhibit No. 4?

A. I have.

Q. Will you turn to page 12 of Section III. If the rate [fol. 881] from the Princeton district, for example, to Rockford were reduced as I have outlined, what would the rate be?

A. $2.12.

Q. $2.12. And that would be for what average distance?

A. 296.5 miles.

Q. From the Princeton district?

A. Oh, pardon me.

Q. Princeton. 363.5, would it not?

A. Yes, 363.5 miles.

Q. Now, what would the proposed rate from Southern Illinois be?

A. $2.25.

Q. And what is the average distance from that group to Rockford?

A. 369.2.

Q. Now, do you know of any conditions, transportation or otherwise, that would justify a rate of $2.25 from the Southern Illinois Group to Rockford for 369 miles and a rate of $2.12 from the Princeton group for 363.5 miles?

A. Well, rates aren't made on distance. You said transportation and otherwise.

Q. Well, all right.

Mr. Hunter: If the Examiner please, I wish to object to this question because it doesn't bear upon any rate that is at issue in this particular proceeding.

Mr. Stadell: Oh, yes, it does.

Mr. Hunter: The rate proposed is $2.24 and he is asking [fol. 882] about a hypothetical rate of $2.12 which I don't think would help the Commission in any way.

Mr. Stadell: If the Examiner please, I can ask a hypothetical question if I want to, in the first place; and in the second place, I think that the question is absolutely relevant and pertinent, in view of Mr. Kuhls' position in this proceeding as disclosed by his direct testimony and the answers to the questions propounded by Mr. Wilkinson.

Mr. Hunter: If it is material, I have no objection.

Mr. Stadell: It is material.

Mr. Hunter: But I didn't see it.

Exam. Trezise: You asked him what relationship should exist between Southern Illinois——

Mr. Stadell: No, I am not asking what relationship. I am asking him what conditions, of his own knowledge, now, what conditions, whether they be transportation conditions or other conditions that would justify the Interstate Commerce Commission in prescribing under the 13th Section petition in this proceeding a rate of $2.25 per ton from the Southern Illinois Group to Rockford for 369 miles and a rate 13 cents per ton lower from the Princeton group for 6 miles less.

Mr. Hunter: The reason I objected, that isn't before the Commission. Any such proposal is not involved.

Exam. Trezise: That is a hypothetical question.

Mr. Hunter: I see.

[fol. 883] Exam. Trezise: I don't know just what it has to do with it.

Mr. Hunter: I don't either, but if the Examiner——

Exam. Trezise: But it is hypothetical. It isn't a fact here. That is, it is not the evidence, on the face of it.

Mr. Stadell: If you will read the decision of the Commission in 4368 you will see it is very relevant.

Exam. Trezise: Give Mr. Stadell your answer to that, Mr. Kuhls.

By Mr. Stadell:

Q. I want this restricted to conditions that you know of, of your own knowledge.

A. Well, one is the fact that rates are not based on mileage, strict mileage formula. And then there is a market history and marketability of the coal, the two coals, and the quality of the two coals produced in Princeton and Southern Illinois. If those were taken into consideration, the Commission might find sufficient reason for approving the presently suspended rates from Southern Illinois and your hypothetical rate from Princeton.

By Exam. Trezise:

Q. It wasn't because you knew of physical transportation conditions that would be different from the two respective groups to this destination? It wasn't that reason?

A. I don't think there is any difference. I don't know of my own knowledge, but I don't think the transportation [fol. 884] conditions are any different.

By Mr. Stadell:

Q. Well, you say rates are not based on mileage. Now, do you know of any reason why, if they differ in distance from those two groups, the rates should not be the same?

A. No, strictly on that basis, they might be the same.

Q. You have referred several times to the history of the adjustment. Do you mean by that to say that even though a rate adjustment is wrong that the mere fact that it has been in effect for several years makes it legal?

A. Well, no, not——

Mr. Wilkinson: Isn't that beyond the scope of the witness' qualifications, Mr. Examiner, as to the legality of the rate?

Mr. Stadell: That is all his testimony has been here, is legality of rates.

Mr. Cardy: Anything that is wrong is wrong.

Mr. Hunter: I object to that. Of course, the answer is obvious, unless there is some hidden reason in Mr. Stadell's words.

By Mr. Stadell:

Q. Would you say the facts, standing alone, that a certain relationship in rates has existed for several years would indicate that the adjustment was lawful and should be perpetuated?

A. Well, there are certain elements——

[fol. 885] Mr. Cardy: I object to that. That is a question of law.

Exam. Trezise: Both those were questions of law. A legal rate is a rate that is named in the tariff, the Commission says. A lawful rate is a rate that the Commission has determined to be lawful. Now, which one of those do you want him to give?

Mr. Stadell: If he is not going to be permitted to answer the question, I move to strike out his testimony, all the testimony he has given bearing on the question of the history of these rates and the fact that because a certain adjustment has been in effect for several years makes it legal.

Exam. Trezise: He will be permitted to answer the question if you will ask the question in a way that he should be permitted to answer it and leave out the legal and the lawful proposition.

Mr. Stadell: All right.

By Mr. Stadell:

Q. Do you mean to say, Mr. Kuhls, that merely because there has been a certain difference between the rates from two groups for several years that that difference should not be disturbed, even though the mileages might justify, as you said, the same rates?

Mr. Cardy: That is merely a question of law. I object to it because the conclusion comes in there as to what the facts are; if something remains in effect for a period of years it becomes lawful, even though, in the first instance, it might be unlawful.

[fol. 886] Exam. Trezise: I think the witness has an answer to that that can be given, and that whether or not the history of the rate would have a tendency to support the continuance and propriety of that rate he may state from his standpoint, from his opinion, not from the legal standpoint or the lawful standpoint.

A. I don't believe that such a relationship would be firmly fixed and not subject to revision if proved to be wrong.

By Exam. Trezise:

Q. Well, would you say the fact that a rate has been in effect for a long time, there has been some reason for it?

A. I understand there are several reasons for this rate relationship but I am not qualified to go into that.

Q. From the standpoint of cause and effect?

A. Yes, you might say so.

By Mr. Stadell:

Q. You also mentioned the marketability of the coal and the quality of the coals. You said something about the principal coal being of a poor quality. Do you feel competent to testify on those two elements? If you do, I have some questions I want to ask.

A. I don't have the data with me.

Q. Do you feel competent to testify on those two?

A. No, I receive all reports of the Bituminous Coal Division and an analysis and I can read those as well as anybody can.

Q. Do you think that makes you an expert?

[fol. 887] A. Oh, no.

Q. On the marketability of coal?

A. No.

By Exam. Trezise:

Q. You reached your conclusion from what you read there, is that it?

A. Yes.

By Mr. Stadell:

Q. That is all your conclusion is based on is what you read from some report you got from the Bituminous Coal Division on those two elements?

A. Yes.

Mr. Stadell: I move to strike out the witness' testimony, his answers to my questions concerning the marketability of the Princeton coals and the alleged difference in the quality of the Princeton and the Southern Illinois coals.

Mr. Kaier: We have no objection to the whole cross examination being stricken, Mr. Examiner.

Mr. Stadell: Well, if you agree to strike all of your direct testimony, I will join in it.

Exam. Trezise: Well, as the Examiner recalls his testimony right now, I think that we will have to rule to let Mr. Kuhls' testimony as he gave it stand.

Any further questions, Mr. Stadell?

Mr. Stadell: No.

Exam. Trezise: We will take a few minutes' recess.

(Recess taken.)

[fol. 888] Exam. Trezise: Well, gentlemen, when you are ready, let us continue. Do we have some further questions of Mr. Kuhls?

Mr. Stadell: I have some more.

Exam. Trezise: Proceed.

By Mr. Stadell:

Q. You say that the differences in the quality of the coal produced in various groups should be taken into consideration by the Commission in adjusting the rates in this case?

A. I think so, to some extent.

Q. To what extent?

A. Well, the Commission has taken into consideration other factors in transportation, in some of their decisions, and as, for example, your last Western Kentucky case involving rates to Chicago, and it seems that they could go outside the scope of strict transportation, to some extent, in this proceeding.

Q. Do you agree with the decision of the Commission in that case?

A. Not entirely.

Exam. Trezise: Well, I don't know whether that is important.

By Mr. Stadell:

Q. Let me ask you this: Is it your position and the position of the Milwaukee railroad that where the distance from two groups to one of the Northern Illinois points, we will say, is the same, that if it should be shown that the coal produced in one group is of a slightly inferior quality to that produced in another group, that the Commission should [fols. 889-890] put in a lower rate from the mines in that group than from the mines in the group producing the slightly superior coal, for that difference in quality alone?

. . . . . .

[fol. 891] A. That it might be one of the factors to be taken into consideration.

Q. Well, would you say that where the distance was the same from the two groups, that the Commission would be justified and you wouldn't object to their prescribing a lower rate from one of the groups than from the other to the same destination, solely because the mines in one of the groups happened to produce a little inferior quality of coal to that produced in the other group?

Mr. Wilkinson: Mr. Examiner, I want to object to that line of evidence. What the Commission should do or should not do under the law is one thing——

Exam. Trezise: That is one thing.

Mr. Wilkinson: And the witness can't express any opinion on that. The witness could express an opinion as to whether the railroad takes that into consideration in making rates within the zone of a reasonable minimum rate and a reasonable maximum rate.

Exam. Treazise: I agree with you, Mr. Wilkinson, on that.

Mr. Stadell, have you your answer? If you haven't your answer, you can proceed to get it as to what he thinks, in his opinion, as an expert of the railroad in fixing rates and appraising them in any way, what they should do and what he thinks that the railroad should do and what he thinks should be proper in the canons of rate-making from the [fol. 892] railroads' standpoint.

By Mr. Stadell:

Q. Did you testify approximately a month ago in certain coal rate cases before an Examiner of the Interstate Commerce Commission in Denver, Colorado?

A. I did.

Q. Did you there testify that it was your opinion that the Commission should not take into consideration the differences in the quality of coal produced in various groups in prescribing the rates from those groups?

A. In answer to a question on cross examination I said that rates were not generally made on basis of the quality of the coals. I think that was my answer.

Q. Well, wasn't your answer that the Commission should not take that into consideration in passing upon the lawfulness of rates on coal?

A. I think in that case we had involved semi anthracite versus bituminous.

Q. Well, the question asked you was concerning the bituminous coal from Routt County, Colorado, and bituminous coal from mines in Wyoming, was it not, and your answer was that the difference in the quality of the coal produced by those mines should not be taken into consideration by the Commission in passing upon the lawfulness of the rates involved from those districts. That was your testimony. You remember it, don't you?

[fol. 893] A. I was just trying to recall whether I put it in those words, that the Commission shouldn't take it into consideration. I can't stop the Commission from considering anything they want to consider.

By Exam. Trezise:

Q. The question was what you did or didn't testify?

A. I don't recall those were my exact words.

By Mr. Stadell:

Q. Well, whatever you testified to on that point in that case, that was your position at that time?

A. It wasn't testimony, Mr. Stadell, otherwise I would have remembered it. I think it was in answer to some question on cross examination.

Q. Don't you consider your cross examination testimony? Well, whatever you testified to in answer to the question on that point, was your position or the position of the Milwaukee railroad at that time, and that was about a month ago, is that correct?

A. If that is what I stated, yes.

Q. Well, did you or did you not state here that it was your position the Commission should take into consideration the difference in the quality of the coal? You said it was your position, didn't you?

A. No, I said it was one of the factors that might be taken into consideration. It isn't our position it should or shouldn't.

Q. It doesn't make any difference to you whether they do [fol. 894] or don't, for the Milwaukee railroad, whether they reduce the rates on account of the difference in the quality of the coal or not?

A. I have no proposition to offer.

Q. You have no position on that at all in this case?

A. Not to the extent of proposing it to the Commission.

Q. Would you object if the Commission took it into consideration?

A. No, I wouldn't object.

Q. Now, if the Commission takes into consideration the commercial desirability of mines in one group versus mines in another group as reflected by an inferior quality of coal, wouldn't you say that they also should take into consideration the differences in the costs of production in those two mines as affecting the ability of the mines to compete in those groups?

A. Well, they should consider everything that is offered in the record.

Q. If they consider one of the commercial elements they should consider the other?

A. I think so.

Q. All right. I would like to ask you a few questions about the rates or the rate statements contained in your Exhibit No. 12. On pages 4 to 7, inclusive, on Exhibit No. 12, you show the average short tariff route and shortest tariff route mileages from the Fulton County and Southern Illinois [fols. 895-911] groups to destinations in Iowa, the differences in distance between those groups and the differentials prescribed by the Commission in the Midland case for those differences in distance. Are you offering this for the purpose of showing, based upon those differentials, what the differential should be between those groups to the Northern Illinois territory involved? Is that the purpose of that presentation?

A. No, it is to show the level of the rates prescribed by the Commission from the two largest producing districts in Illinois to destinations in Iowa.

Q. To show the levels of the rates and to use these levels in justification of the levels that you are proposing here from Illinois and Indiana to Northern Illinois?

A. Yes, the levels that they prescribed to Iowa in my opinion certainly justify the level that we are proposing to Illinois.

Q. Now, I notice that your counsel, in qualifying you, was very careful to have you state that you knew nothing about transportation conditions, and I assume that you know nothing about the comparative transportation conditions from the Illinois mines to Northern Illinois and from those

mines to these destinations in Iowa. Am I correct in that assumption?

A. Well, I have seen them out of traffic density studies and heard a lot of operating testimony. I said I made no actual study myself but I had a general idea from what I have seen and heard.

* * * * * * *

[fol. 912] W. H. KUHLS, resumed.

Cross-examination (Continued).

By Mr. Stadell:

Q. In a question that Mr. Wilkinson asked you, he referred to certain mines on the Milwaukee Railroad which are located south of the Linton-Sullivan Group and some which he stated that the rates were 7 cents a ton over the Linton-Sullivan Group. How many mines are there located on the Milwaukee there? Can you tell us what the names of those mines are?

A. There are no mines located on the Milwaukee in that section from which we carry rates 7 cents higher than Linton.

Q. You say there are no mines?

A. No, sir, on the Milwaukee Railroad.

Q. Well, what railroad are they on?

A. They are not on any railroad.

Q. Well, what are they, wagon mines, truck mines?

A. Yes, sir, wagon mines.

Q. Do they truck coal over to the Milwaukee Railroad to load it into cars on the Milwaukee?

A. Over a ramp, yes.

Q. And that ramp was constructed by the Milwaukee Railroad?

[fol. 913] A. No, sir.

Q. It was constructed by whom?

A. By the operator of the mine.

Q. How far are the mines located from that ramp, approximately?

A. From one to four miles.

Q. How many mines are there?

A. At the present time I think there is only one.

Q. Just one?

A. That is loading, yes, sir.

Q. Are there more that have been loading in the past?

A. Well, prior to the shortage of labor there were two or three.

Q. Could you tell us the approximate annual production of those mines?

A. Very small. I don't have the breakdown of the individual mines, but as I understand it, it has been very small.

Q. Are they located approximately half way between the Linton-Sullivan and Princeton Groups?

A. Well, taking average mileages from the group to Rockford, for example, if these mines were included in the Linton Group, they would increase the average distance from the Linton Group 12.1 miles, as compared with the average distance Princeton over the Linton Group of 74.7 miles. In other words, they would increase the average from the Linton Group about 1/6th of the average distance between the Princeton and the Linton Groups.

Exam. Trezise: Now, you said these mines—Now, do you [fol. 914] mean that? You said that there was a ramp running from the mines three or four miles, and the distance from what—the distance from a point on the Milwaukee Railroad into which this ramp runs? Is that what you figured the distance from, or the mines?

A. The origin points named in the tariff at which the coal is loaded.

By Mr. Stadell:

Q. Well, the origin points named in the tariff at which the coal is loaded is the location of the ramp, isn't that right?

A. That is right.

Exam. Trezise: That is the end of it in connection with the Milwaukee.

By Mr. Stadell:

Q. The ramp is on the Milwaukee, is it not?

A. That is right.

Q. And the mines are located approximately over the highway one to three miles from the ramp?

A. Yes, sir.

Q. The distance you gave, did that include the highway distance?

A. No, that is figured from the railroad origin point.

Q. From the ramp. So that they are closer to the Linton-Sullivan Group than they are to the Princeton Group?

A. Yes, much closer.

Q. And it would be more logical to include them with the Linton-Sullivan Group than with the Princeton Group, if [fol. 915] they were included in any group?

A. Yes, if they were included in the Princeton Group, these origins would materially reduce the average from the Linton Group.

Q. Do you know whether those mines ship any coal to the destination territory involved here?

A. I haven't any knowledge of any. I think Chicago is the farthest destination to which any coal from these mines has been shipped.

Q. Could you give us the names of those mines for the record?

A. I don't have them here.

Q. Will you furnish them for the record, the name of the producing company and the name of the mine?

Exam. Trezise: Do you want the names of the mines or do you want the names of the points where the coal is loaded on the railroad?

Mr. Stadell: I would like to have all three, the names of the producing company, the name of the mines, if there is a name, or number, and the tariff origin point on the Milwaukee at which the ramp is located. I think the record ought to have that information.

The Witness: I think the reports of the Bituminous coal division show the name of the mine and the operator and the license number.

Mr. Stadell: Will you furnish that information that I [fol. 916] have requested for the record?

The Witness: Yes, I can.

By Mr. Stadell:

Q. Now, you referred to the differential to the points involved here between the Linton-Sullivan and the Brazil-Clinton Districts being 5 cents per ton in some cases and 10 cents per ton in other cases, and you pointed out the

average distance was 38.4 miles, and stated either one of those differentials for that distance would be proper, is that correct?

A. I stated they could be found proper in view of what the Commission did in 26558.

Q. Which of those differentials in your opinion is proper?

A. I stated I would prefer the 10 cents differential.

Q. That is the differential that applies generally between those groups, is it not, to destinations in other territory?

A. Yes, that is correct.

Q. And you felt that that differential was justified by what the Commission prescribed between the Illinois group in the Midland case?

A. No. I said either the 5 or 10 could be justified.

Q. By what they prescribed in that case?

A. Yes, sir.

Q. Now, going back to the decision of the Commission in the first Illinois 13th Section case, Docket 23130, do you recall that the Commission made a finding in that case to the effect that the transportation conditions from the Illi-
[fol. 917] nois mines to Northern Illinois were substantially the same as from the Indiana mines to Northern Illinois?

A. I recall that, yes.

Q. To your knowledge, has there been any change in those transportation conditions since that time?

A. None that I know of.

Q. Since the decision in that case?

A. No, I don't know of any.

Q. You stated that following the decision of the Commission in that case that the rates from mines on the Milwaukee in the Brazil-Clinton and Linton-Sullivan Group to Rockford, Freeport, and certain intermediate points, was reduced 17 cents per ton, that is from Brazil-Clinton and 12 cents per ton from Linton-Sullivan.

A. Yes, sir.

Q. And those reductions became effective when?

A. April 23, 1934.

Q. So that from the standpoint of history they have been in effect, that adjustment has been in effect for nine years, has it not?

A. In effect for forty years, with the exception——

Q. I am talking about now the adjustment that prevails today, under which the rates from the Milwaukee mines in

the Brazil-Clinton Group to Rockford on the Milwaukee Railroad are 17 cents per ton lower than from other mines in that group?

[fol. 918] A. Putting it that way, yes.

Q. The same would be true with respect to split rates from mines in the Linton-Sullivan Group to Rockford, Freeport, and these other points?

A. Yes, sir.

Q. Did the Indiana producers actively participate in support of that adjustment when it was proposed and before the Interstate Commerce Commission?

A. They did.

Q. They have filed no complaint since that time to have it changed, have they?

A. No, sir.

Q. Will you refer to your Exhibit No. 12, please, page 13. On that page you show the basis of rates which was said to have been prescribed by the Commission in certain cases indicated on certain commodities and what percentage the prescribed basis of rates was of the first class rate. Have you made any investigation to determine the average loading of any of these commodities?

A. I have not.

Q. Have you made any investigation to determine the transportation conditions surrounding the movement of these commodities in the territories where these rates were prescribed to apply?

A. I would like to change my answer on the previous question. Line 1 is coke. I, of course, know the average loading of coke.

Q. What is it, about 35 tons per car?

[fol. 919] A. It is running a little heavier than that because of the use of special equipment, open top box and stock cars. We have a movement to California from Terre Haute and that averages 42, 43 tons.

Q. But generally and in normal times the average loading is not in excess of 35 tons per car?

A. That is about right, 35 tons. Now, I haven't answered your last question. I haven't made any investigation as to the transportation conditions, I think you said.

Q. Yes, have you made any study as to the volume of the movement of these commodities?

A. No, sir.

Q. Now, take line 30, clay flue lining, 17½ per cent of first class. Page 13 of Exhibit 12 indicates that the basis of rates was prescribed in 37 ICC 114. That case was decided about 1915, wasn't it?

A. I would say so, from the citation.

Q. Do you know whether that basis of rates is in effect today on clay flue lining anywhere?

A. Not to my knowledge, I don't.

Q. Now, take lines 2, 3, 4, 5, 6, 7, 8, 12, 16, 17, 18, 19, 27, 28, 29, and then over on the next section of page 13 of Exhibit 12, you don't show any line numbers, but you show the commodity, and all the way down that section of the exhibit it is indicated that the rates or the basis of rates indi- [fol. 920] cated on all those commodities was prescribed by the Commission in volume 123 at page 203. That was the Consolidated Southwestern Class Rates Cases, wasn't it?

A. I think so.

Q. And which was decided about 1927?

A. I think so.

Q. The basis of rates prescribed in that case was to apply in Louisiana, Arkansas, Texas, and Southwestern states generally?

A. I am not entirely sure, but I will take your word for it.

Q. Do you know whether the basis of rates indicated on page 13 of Exhibit 12 as having been prescribed on those commodities in that decision are in effect today?

A. No, but we will have a subsequent witness that can answer those questions. He is familiar with these general adjustments.

Q. Will you refer, please, to page 16 of Exhibit 12. You show in there the rate on Bituminous coal from the Inner Crescent Group to 12 of the suspended destinations in Northern Illinois, and the first class rate in cents per ton from Ferndale, West Virginia, one of the origins in the Inner Crescent Group. Now, the Inner Crescent Group covers a vast area, does it not, in the states of West Virginia, Virginia, Eastern Kentucky, and Tennessee?

A. Yes, I think that is about the extent of it.

Q. And there are thousands of origin points within that group, are there not, from which class rates are published [fol. 921] and from which coal rates are published?

A. That is right.

Q. And you selected one out of several thousand to show what the first class rate was?

A. Well, I didn't take the nearest point and I didn't take the farthest one. I took one that I thought was representative.

Q. Well, take Tennessee, for example, which is included within that group. Aren't the rates from Tennessee to Northern Illinois points on a higher level than from points in Pennsylvania, the class rate?

A. I think they are from Tennessee, yes.

Q. So that if you had taken the class rate from Tennessee you would have had an entirely different picture in Exhibit 12?

A. Yes, and had I taken one nearby point in Pennsylvania, I would have a different picture too.

Q. Now, as contrasted with the vast area covered by the Inner Crescent Group, the individual Illinois and Indiana Groups are relatively small in size, are they not, and contain comparatively few origin points?

A. Well, the so-called Inner Crescent Group consists of several groups and the aggregate of the Inner Crescent is larger than any of the Illinois or Indiana Groups.

Q. In other words, you have but approximately, as I recall the record here, thirty origin points in the Fulton-Peoria Group, Fulton County Group, for example, isn't that right?

[fol. 922] A. Approximately.

Q. About 70 in the Southern Illinois Group?

A. Yes.

Q. Now, the Outer Crescent District from which you show coal rates and first class rates on page 17 of your Exhibit No. 42 is located east and south of the Inner Crescent, is it not?

A. That is right.

Q. And also includes origins in Virginia, Eastern Kentucky and Tennessee?

A. Yes, sir.

Q. And in showing the first class rate from the Outer Crescent you also selected one origin point in West Virginia?

A. I did.

Q. Now, referring to page 16 of Exhibit 12, first, I note that the first class rate from the Inner Crescent to Amboy is $28.60 per ton and the Bituminous coal rate is $4.04 per ton, the coal rate being 14.1 per cent of the first class rate. Page 17 shows that the same identical class rates apply

from your origin points in the Outer Crescent District to numerous points in Wisconsin, for example, starting with Zenda down through a number of points and then Janesville. But the coal rate from the Outer Crescent instead of being $4.04 per ton is $5.02 per ton or 98 cents per ton higher; and that coal rate is 17.6 per cent of the first class rate, is that right?

A. That is right.

[fol. 923] Q. So that while the first class rates from these origins in both the Inner and Outer Crescent are the same to some of the Northern Illinois points as they are to points farther beyond in Wisconsin, the coal rate is considerably higher to the Wisconsin points than to the Northern Illinois points, is that right?

A. The same situation as we have from Illinois and Indiana.

Q. Well, your class rates from Illinois to Indiana, however, are higher than to the Wisconsin points, are they not, as indicated by your exhibit?

A. I meant the coal rates to Wisconsin from the Crescents, than they are to Illinois, the same as reflected in the rates from Illinois and Indiana to Illinois and Wisconsin.

Q. But the class rates are the same, therefore you get a higher percentage from your coal rates than your class rates, than you did from Illinois and Indiana?

A. Well, your class rates are on a mileage basis figured by the shortest possible route and the distance to a point in Wisconsin from West Virginia on that mileage formula may be less than the mileage from the same origin to the same destination in Illinois.

Q. In view of that fact, do you think the comparison shown on pages 16 and 17 of your exhibit really means anything?

A. Not the comparison that you are trying to make, no, sir.

Q. Well, that is the comparison the exhibit shows, isn't it?

[fol. 924] A. It shows what the rates are.

Q. And you presented it for the purpose of showing what the comparative percentage of the coal rates from Illinois and Indiana are of the first class rates and from these Eastern districts to these same destinations?

A. How much lower the Illinois and Indiana rates are as compared to first class.

Q. Will you turn to pages 18 and 19 of your Exhibit 12. Now, have you made any investigation with respect to the transportation conditions, talking about an independent investigation, of the transportation conditions surrounding the movement of coal from the Ohio mines to the destinations involved or the volume of the movement?

A. I read the record in this case, 192 ICC 413, and there was considerable operating transportation testimony in that case.

Q. Well, that is all you know about it? You didn't make any independent investigation?

A. No. That investigation was made by the Commission.

Q. And that was made about when, 1929?

A. I think so.

Q. Now, I note on page 18 you show volume of Bituminous coal in tons of 2,000 pounds, year 1931, from the Ohio districts shown to the destinations shown. Do you know whether that same volume or any tonnage is now moving from those origins to those destinations at the present time? [fol. 925] A. I don't know that the same volume is moving, but I understand coal is still moving under these rates in substantial quantities.

Q. Do you know of your own personal knowledge whether it is moving or not?

A. I get the reports of the Ohio Coal Bureau that show that information.

Q. But you didn't feel it necessary to put the present tonnage down in lieu of the tonnage for 1931 in this exhibit?

A. No. This was lifted from the decision of the Commission in 192 ICC 413.

Q. All you know is what the Commission put down in the decision?

Mr. Kaier: No. He also told you he knew from a report, Mr. Stadell.

Mr. Stadell: All he knows about this though is that he took it out of a decision of the Commission and put it down on a piece of paper and is putting that in this case.

The Witness: I didn't check the way bills because they weren't available to me, to see if these tonnages were correct, but I assume they were because they were in the Commission's decision.

By Mr. Stadell:

Q. I asked you if you didn't think it was important, in view of the fact you said you knew what the tonnage was, or you had access to reports that showed it, to show the tonnage moving at the present time rather than the ton-
[fol. 926] nage that moved in 1931, or twelve years ago?

Mr. Kaier: I submit it is more important to show the tonnages upon which the Commission acted.

Mr. Stadell: Well, we are trying a case in 1943, Mr. Kaier, and possibly these are paper rates today, as far as this record shows.

By Mr. Stadell:

Q. Now, I notice that on page 19, in the column headed Volume of Bituminous coal in tons of 2,000 pounds year 1931, you show no tonnage.

A. None appearing in the Commission's decision.

Q. Are we to assume from that none moved and these are purely paper rates that the Commission prescribed?

A. No, I didn't want to leave that assumption.

Q. What assumption do you want to leave, that there was tonnage moving?

A. Yes, I understand there was and is.

Q. Where did you get that information that there was, if not from the Commission's report?

A. I had these Ohio Coal Bureau reports going back many years.

Q. You checked those to determine whether there was tonnage moving in 1931?

A. Just looked them over as they come in.

Q. Was there tonnage moving in 1931 from those reports that you had?

A. As I recollect it, yes.

[fol. 927] Q. How much tonnage was moving and why didn't you put it on this exhibit?

A. I said I just took this information from the Commission's report and didn't go beyond that.

Q. Well, as far as your present knowledge is concerned, you don't know whether there was any tonnage moving from the origin groups to the destinations shown on page 19 of Exhibit 12, from 1931 down to the present time, or what the volume was or is, do you?

A. I don't recall the figures.

Q. So that your answer to my question is "No", is it?

A. No, I wouldn't say that I don't know.

Q. Well, if you do know, what is it?

A. I said I don't recall the figures, but I wouldn't say there wasn't any movement.

Q. Well, you don't know of any, that is what I am getting at.

A. I don't know the volume of the movement.

Q. You don't know of any right now, do you, on your present knowledge?

A. Not the exact tonnage figures, no, sir.

Exam. Trezise: Well, do you know that there is any? That is what he is asking.

The Witness: I said yes, at least I intended to.

By Mr. Stadell:

Q. You know that there is tonnage moving from the origin groups in Ohio to the destinations shown on page 19 [fol. 928] of your exhibit and that there was tonnage moving in 1931?

Mr. Hunter: I object to the question. He has been over it half a dozen times.

Mr. Stadell: The trouble, Mr. Hunter, is that Mr. Kuhls will not make a straightforward honest answer. He wants to evade every question. We will save a lot of time if he will just give a straightforward answer.

Exam. Trezise: Both statements may be stricken from the record. Let us have some proper remarks. The witness cannot be accused of being dishonest. Strike it all out.

Mr. Hunter: I merely objected because we have been all over that. He knows Mr. Kuhls has indicated his position.

Exam. Trezise: Mr. Stadell, you get your answer now, if you want, if you haven't already gotten it.

Mr. Stadell: If he doesn't know and just says he doesn't know, that will settle it, but he keeps trying to indicate he does know without giving the information.

Exam. Trezise: Is that a question?

Mr. Stadell: No. I am stating the reasons why I had to pursue this.

Mr. Hunter: Mr. Kuhls just indicated he didn't recall the figures.

Mr. Stadell: He didn't recall them and he doesn't know them and he can just say he doesn't know them, and that will end the whole thing.

[fol. 929] Exam. Trezise: Well then, he does not know the exact figures, is that correct?

The Witness: I stated that, Mr. Examiner.

Exam. Trezise: But you do know that there are some figures?

The Witness: That is right.

Exam. Trezise: Now, does that answer your question?

Mr. Stadell: It doesn't answer my question, no. I asked him, to his present knowledge, whether he knows that there was any movement of coal from the origin groups in Ohio to the destinations in Ohio shown on page 19 of Exhibit No. 12, during 1931 or down to the present time.

Exam. Trezise: Answer that. Then we will pass it.

The Witness: It is my recollection that there was, but I do not know the volume of the tonnage at the present time.

By Mr. Stadell:

Q. And you didn't feel it important to refresh your recollection in order to try to get that tonnage to include it in this exhibit?

A. No, I didn't anticipate your questions, Mr. Stadell.

Q. Is it your position that the volume of tonnage has nothing to do with making freight rates?

A. Yes, the volume of tonnage and also the lack of volume have a lot to do with making freight rates.

Q. So that if there was a certain volume, you think it would be important to show it, would you not?

[fol. 930] A. That is right.

Q. Now, in expressing the opinions that you expressed yesterday as to the propriety of having a parity of rates from the mines in the Brazil-Clinton Group and the mines in the Linton-Sullivan Group, on all railroads from those groups to the destinations involved here, were you expressing your individual opinion or were you speaking for all of the respondent railroads?

A. That was my individual opinion, because all respondents are as a unit proposing the rates under suspension.

Q. And in expressing your opinion that it would be proper to take into consideration the differences in the quality of the coal from the various origin groups in pre-

scribing the rates from those groups to the destinations involved, is that your personal opinion or——

Mr. Hunter: I object to that as a misstatement of Mr. Kuhls's testimony. Mr. Kuhls, as I recall it, didn't so testify.

Exam. Trezise: Just ask him the question, if you did or didn't.

Mr. Stadell: Strike it and I will reframe it.

Exam. Trezise: All right.

By Mr. Stadell:

Q. In expressing the opinion yesterday, as I understood you to do, that it would be proper for the Commissions to take into consideration the differences in the quality of the coal produced in the various origin groups in Illinois and [fol. 931] Indiana in prescribing rates from those groups to the destinations involved in this case, were you expressing your own opinion or were you speaking on behalf of all the respondents in this proceeding?

Mr. Hunter: I would like to direct the witness's attention to an implication there that he so testified.

Mr. Stadell: Just a minute.

Exam. Trezise: I think the witness can answer that. Go ahead and answer it, Mr. Kuhls.

The Witness: Assuming that is what I said—it happens not to be—that was my personal opinion brought out on cross-examination.

By Mr. Stadell:

Q. Now, you said, assuming that is what you said, and it isn't—what did you say?

A. I said that that might be one of the things, that is, the quality of coal, that might be taken into consideration in making rates. I didn't suggest that the Commission do it and I didn't suggest that it was proper for the Commission to do it.

Q. Well, do you say it would be improper for the Commission to do it?

Mr. Kaier: I object on the ground it is a question of law.

Exam. Trezise: Ask him what he would do, Mr. Stadell.

By Mr. Stadell:

Q. Well, I will put it this way then: You are not suggesting or advocating the Commission do it in this case? [fol. 9322] A. No. That was——

Q. Either on your own behalf or for any of the respondents?

A. That was merely in response to a question. I am not asking the Commission to do it.

Q. Now, in stating, as I understood you, that you would not protest against a reduction of 17 cents per ton in the present rates from Princeton and Boonville Groups to Rockford, Freeport, and these other points, if the Commission made a parity of rates from all mines in the Brazil-Clinton Group on the railroads, other than the Milwaukee, with the rates from the Milwaukee mines, and a parity of rates from mines in the Linton-Sullivan Group, were you expressing your own opinion or your position or were you stating the position of all the respondents?

A. Anything that goes beyond the proposal made or these exhibits were my own opinions.

Q. In other words, anything that you have stated in your testimony, either on direct or on cross-examination, that would suggest that the Commission approve anything except the rates under suspension, is to be taken as your own opinions as to what should be done and not the opinion or positions of the other respondents?

A. That is right.

Mr. Stadell: Mr. Examiner, I move now, referring to Exhibit No. 12, that pages No. 13, 14, 15, 16, 17, 18, and 19 of [fol. 9323] Exhibit 12 be stricken from the record on the ground that as disclosed by the cross-examination of Mr. Kubik there is no showing of substantial similarity of transportation conditions surrounding the movement of coal from the Illinois or Indiana mines to the territory involved until the movement of coal or the other commodities shown on those pages of the exhibit from or to the origins shown on those exhibits. There is no showing of any similarity in transportation conditions, subject-matter, or any of the other essential circumstances which the Commission has repeatedly held must be furnished to make such comparisons competent, and the witness does not even know whether many of the mines shown on page 13 of Exhibit 12 are in existence

at the present time, they having been prescribed as far back as 1915, twenty-eight years ago.

My objection is on the ground that they are irrelevant, immaterial and incompetent and without any probative value.

Exam. Trezise: The objection is overruled on the ground that your interests are protected. Your objection goes to the weight of that evidence rather than to rejecting it completely. With the cross-examination, in due deference to your request, I think you are fully protected. You cannot be prejudiced by the acceptance of it. Is that all the questions you have?

Mr. Stadell: I have some additional questions I was going to ask of Mr. Kuhls.

Exam. Trezise: Let us have a recess.

[fol. 934]. (Recess taken.)

Exam. Trezise: All right, gentlemen, let us begin. Mr. Stadell, do you have some further questions now?

Mr. Stadell: Yes.

Exam. Trezise: Proceed.

By Mr. Stadell:

Q. Will you refer to page 13 of Exhibit 12 again, please, Mr. Kuhls. In connection with the rates on coke that you show there as having been prescribed on the basis of 16½ per cent of the first class rates, was that basis prescribed to apply in connection with distances computed over the shortest possible routes between origin and destination?

A. That basis was prescribed by the Commission in I. & S. 3511, involving coke rates from Ashland, Kentucky, and Southern Ohio ovens to I. F. A. and W. T. L. territories, and the mileage formula in that case was the so-called short line mileage.

Q. That would be computed over the shortest possible distance between origin and destination, wouldn't it?

A. Not exactly the shortest, because in a class rate formula there are certain groupings that doesn't make the rate to each point the rate for the shortest possible distance.

Q. Well, the method of computing distances though—you said it was prescribed to apply from how many origins?

A. From Ashland, Kentucky, New Boston——

Q. Massachusetts?

A. No, Ohio, and some other Southern Ohio ovens.

[fol. 935] Q. And what the Commission prescribed was a mileage scale?

A. Yes, sir.

Q. The scale itself was supposed to be about 16½ per cent of the first class, the Commission so stated, the first class rate scale?

A. That is right.

Q. And the mileages they said that should be used in connection with that were to be computed over the shortest possible route, for example, from Ashland, Kentucky, to the destinations involved?

A. That is right.

Q. And the rate having been established on that mileage would then be applied, of course, over the tariff routes that the carriers established?

A. That is correct.

Q. And the distances over those tariff routes would generally be longer, would they not, than the shortest possible distance between the same points computed in accordance with the formula in that case?

A. They would in certain instances.

Q. So that the actual rates would be less than 16½ per cent of the first class rates based upon the distance over the routes over which the traffic actually moved?

A. No; it would be the same percentage of the class rates, regardless of how you figured them.

[fol. 936] Q. Well, your class rates applied from groups, did they not, origin groups to destination groups?

A. That is right.

Q. And your coke rates applied from individual points like Ashland, Kentucky, to individual destinations?

A. Regardless of how you figure the mileage, whether it is the shortest possible or tariff route, you still have the same percentage.

Q. Even though the distance over the tariff route over which the traffic moved was longer than the distance used in computing the rates?

A. The class rate is the same over the shortest possible distance route.

Q. Have you checked any coke rates to determine whether they are 16½ per cent of the first class rates between any of the origins involved for the distance over the shortest tariff route?

A. At that time, yes.

Q. And you determined from that check the rates in effect were actually 16½ per cent of first class?

A. Generally, yes. They varied. Some were less and some higher.

Mr. Stadell: I have a number of questions I was going to ask in connection with the information set forth on Mr. Kuhls's Exhibit 12, pages 21 to 23. I understand, however, [fol. 937] that Mr. Vesey has some questions that he wants to ask Mr. Kuhls in connection with that, and I will let Mr. Vesey proceed; but I would like to reserve the right to ask Mr. Kuhls some additional questions if they aren't asked by Mr. Vesey.

Exam. Trezise: Very well, Mr. Vesey.

By Mr. Vesey:

Q. Mr. Kuhls, as I understood your direct testimony you stated that one of the important factors incident to the establishment of the rates published by the Milwaukee Railroad was the necessity for markets of the mines on that railroad, is that correct?

A. To hold the market.

Q. That is, to hold it?

A. Yes, sir.

Q. In other words, I take it, that one of the factors in your freight rate policy is the establishing of rates which will enable your producers to hold given markets against competitors, is that right?

A. When their competitors' rates are reduced, it is our policy to make adjustments in our rates to the extent possible to continue in competition with the competing groups.

Q. Now, does that policy hold even though the rate which is necessary to bring that about is a rate which is a non-compensatory rate, so to speak, to your railroad, for the cost of carrying the traffic and collection?

A. No. To my knowledge, we do not publish any rates [fol. 938] that are less than compensatory.

Q. Nothing that is less than a compensatory rate on that basis. In other words, you don't publish a rate unless in your opinion that rate is a just and reasonable rate from a minimum rate basis to the railroad?

A. It has to be demonstrated to us that a rate returns more than the actual cost of handling the traffic.

Q. Now, following that theory along logically, does that mean that in the light of your suggestions which you made here yesterday, that in adjusting the rates on Indiana coals to the affected territory, that the rates of the other roads should come down to meet the Milwaukee rates—that in your opinion the present rate from the Milwaukee to the destinations is a just and reasonable rate on the minimum basis?

A. It is higher than a minimum rate and it is lower than a reasonable maximum rate.

Q. Now, I ask you to think back to the time of the decision in 23130, and ask you whether or not you are familiar with the transportation conditions recited and referred to by the Interstate Commerce Commission in that decision.

A. I don't recall it very vividly, but it is my present understanding that the conditions now are approximately the same as the Commission found in that decision.

Q. In other words, so far as you know, there has not been any substantial change in transportation conditions as [fol. 939] found at that time by the Commission in that case?

A. Not general or substantial. There have been some local changes, particularly on our railroad. We have heavier locomotives handling our coal from Indiana than we did at that time.

Q. Could we state it another way and say there has not been such changes as would cause any tribunal such as the Interstate Commerce Commission to change its determination because of any new factors that have entered the picture since that time?

A. No. They said then that the transportation conditions were comparable and I think that that can still be said.

Q. Now, I believe you said this morning in answer to a question by Mr. Stadell that the lack of volume—by that, I take it, you mean volume of traffic—moving from an origin group or points to destinations should have something to do, or that it has something to do with the determination of just and reasonable rates, is that right?

A. Yes, I meant there that it is the function of the railroad to establish rates that will move traffic.

Q. Now then, just exploring that for the moment, if we were to turn to some of these origin groups and then find that to nearby markets no coal was moving from those origin groups, would that be indicative of an improper rate, in so

far as moving coal from that origin group is concerned, and by improper, I mean an unjust and an unreasonable rate?

Mr. Kaier: I object, Mr. Examiner, on the ground that the [fol. 940] question is one of law. The Commission itself has said many times the mere fact there is no movement doesn't stamp the rate as being unreasonable.

Exam. Trezise: Oh, I think he can ask about the movement, if there is any.

The Witness: No, I wouldn't say that that was indicative that the rate was unreasonable, because you have the quality of the product to take into consideration. For example, we have a number of mines in Iowa. The rates applicable to the Iowa coal in intrastate commerce were prescribed by the Iowa Commission and they are on a very low level, but still they can't compete with Illinois coal because of the difference in the quality.

By Mr. Vesey:

Q. I will ask you to assume that this statement is correct, and I submit, sir, that I will give the proper documentary evidence to support it in the course of this proceeding: That the poorest quality coals produced in the state of Illinois, in so far as domestic coals are concerned, are the Fulton County fine coal; assuming that fact to be true, in your opinion, should that factor be given consideration in the establishing of just and reasonable freight rates on the movement of that coal to the markets where coals that compete with it are consumed?

Mr. Kaier: May I ask, Mr. Vesey, do you mean by "given consideration" by the Commission or by the railroad?

Mr. Vesey: By the railroads.

The Witness: As I understand it, that point that you raise [fol. 941] is probably one that is more contentious than any other involved in rate making. I don't know whether the Commission should consider it or not.

By Mr. Vesey:

Q. You don't know whether they should or not. How about the railroads?

A. Well, I think the railroads would to the extent that the resulting rates wouldn't be less than reasonable, minimum reasonable rates.

Q. Can you help my understanding out just a bit, Mr. Kuhls, by just pointing out concretely to me when quality should be considered as a factor and when quality should not be considered as a factor in the making of freight rates, using your own testimony here as the basis for that answer?

Mr. Biaett: I don't believe the witness has stated it should be definitely as yet. He said it might be.

Exam. Trezise: Let the witness answer it.

The Witness: Well, that is a very difficult question for me to answer because it involves law, and I don't know that my answer could mean anything. I couldn't really put my finger on the point at which it should be given consideration and to what extent it should be given consideration.

By Mr. Vesey:

Q. Let us put it another way, to get it concrete. As a rate making expert, holding the position that you do with this great railroad, the Milwaukee, would you subscribe to the theory that the highest level of rates should be imposed [fol. 942] upon the lowest quality of coal?

Mr. Kaier: Now, imposed by the Commission or by the carriers?

Mr. Vesey: Either one. It is immaterial.

Mr. Kaier: Mr. Examiner, I desire to make an objection. I think it is material. If Mr. Vesey is asking whether the Commission may impose the highest level, that is a question of law and this witness should not be allowed to answer. On the other hand, if he is asking as to what the carriers should be permitted to do, the question is irrelevant because there is no question here as to what the carriers may do or may not do. The question here is what the Commission is being asked to do.

Exam. Trezise: Would it serve your purpose, Mr. Vesey, to ask him whether he thinks there should be a lower rate on a lower quality coal? If you want to ask him that, in view of the fact the Commission repeatedly have refused to prescribe lower rates on fine coal than on lump coal, go ahead.

By Mr. Vesey:

Q. All right, I will ask this question: Do you subscribe to the theory in the making of rates that a lower level of

rates should apply to the lowest quality coals than that which applies to the highest quality coals from any given group of producing districts?

A. No, I don't, because the lowest quality coal might be that produced in the nearest origin district to the destination territory, and this lowest quality coal taking a higher [fol. 943] level of rates may still be able to complete with the higher grade coal by reason of the nearness to the market. For instance, a rate from Fulton County to Peoria might be 110 per cent of the 23922 scale, but because of its nearness to Peoria you might have a rate of such measure that would have no difficulty in competing.

Q. Let us just take from your thinking this geographic advantage of one or the other because of location, and assume that both are located with respect to the market geographically in the same relative position; then what would your answer be?

A. Well, in that case they would be both in the same district and they would have the same quality.

Q. No, assuming the difference in the quality now, but they could be two equi-distant points from the market, if they are located at equi-distant points.

A. From the standpoint of the railroads, I would say that probably we would treat the lower grade coal a little more liberally than we would the higher grade coal in order to prevent the closing of the mine.

Q. Then, I take it, the answer is that other factors being the same, in your opinion, a lower level should obtain for the lower quality coal?

A. When consideration is given to that question by individual railroads, yes.

Q. Now, do you have any reason for not making that kind of a recommendation to the regulatory bodies involved [fol. 944] in this case, the Interstate Commerce Commission and the Illinois Commerce Commission?

Mr. Kaier: As a matter of law, Mr. Examiner, we have one very good reason, and that is that neither Commission has the power to take it into consideration.

Mr. Vesey: Now, let us not argue the law now, please, Mr. Examiner.

Mr. Kaier: You are asking the witness the law.

Mr. Vesey: I am asking whether or not he would be willing to make that recommendation to these two bodies. That is not a question of law.

Mr. Kaier: Well, I submit it doesn't seek to elicit any facts. He is not asking the witness for any facts. What would he recommend to the Commission, that is your question.

Exam. Trezise: Well, I think he can ask whether the witness wants to recommend it. I don't know how important that is. Do you want to recommend price as being the only thing governing coal rates?

The Witness: No, because if it is a question of it being unlawful, I wouldn't want to recommend anything unlawful to the Commission.

Exam. Trezise: But to keep a mine in operation, you might give one person a little lower rate if his coal was not capable of competing with a higher grade coal?

The Witness: I think so, yes.

[fol. 945] Exam. Trezise: That is the commercial situation or economic condition that you, representing the railroad, would undertake to facilitate the operation of the mines on your railroad?

The Witness: That is right.

Exam. Trezise: Pardon me, Mr. Vesey. Go ahead.

By Mr. Vesey:

Q. Will you turn to page 14 of your Exhibit 12, Mr. Kuhls. I want to ask you to help me. I am sort of a neophyte here. To understand just some of the reasoning back of these proposed rates, because as I understand it, you are the freight rate expert for your road, in so far as your road participated in the proposed recommendations of the proposed rates, and on that basis I ask you to take just two examples.

Take Amboy and take Geneva, and turn to the Fulton County Group, because that is the only group where you have shown the per cent of the present rate and also the per cent of the proposed rate, and I want you to explain to me why in the case of Amboy you have a recommendation there that the rate be increased from $1.50 to $1.55, thus changing the per cent the proposed coal rate is of the first class rate from 11.4 per cent to 11.7 per cent. Then when you get down to the illustration such as Geneva, you

there recommend that the rate of $1.65 be reduced to $1.55, thus changing the per cent not upwards, but in this instance downwards, from 11.1 to 10.5. Now, assuming that the relationships here as shown on that exhibit should be given the effect which you asked that they be given effect in your [fol. 946] direct examination, tell me why you had the reverse of the principle set forth in the first instance when you considered the second one?

A. Well, when the carriers published these rates, they did not have before them the class rate level and there was no intention to change the relationship of the coal rates to the class rates. The purpose of the proposal, as explained by two preceding witnesses, is to comply with the decision of the Commission in Docket 25419, the Beloit case, and whatever we show here as the relationship just is the result of that proposal.

Q. Well, do you mean by that answer, Mr. Kuhls, simply to say that so far as these proposals are concerned, they merely signify the desire of the railroads for a little more money, regardless of any fundamental principles involved in rate making?

A. No, it goes beyond that. It is to avoid reductions in rates to Wisconsin destinations, and to bring up the level of rates in Illinois, which have been referred to in scores of cases by the Interstate Commerce Commission as the lowest in the country.

Q. Why, I thought there was some question as to that, particularly with respect to the Indiana rates into this territory. Is my understanding incorrect?

A. Was that a question?

Q. Yes.

A. Will you read the question.

(Question read.)

[fol. 947] The Witness: As to what?

By Mr. Vesey:

Q. As to the rates, having the lower level of rates. You say Illinois, and I say, I thought there was some question as to whether that might be applied to Indiana rather than Illinois. Is that true?

A. Well, the Indiana rates are to be brought up also along with Illinois.

Q. Aren't they, as proposed here, even a little lower, when that issue was thrashed out in 23130, and more particularly the rates on the Milwaukee Railroad by, I believe we determined the other day, about 2 cents worth?

A. I referred to the Beloit case, 25419. You are going back to 23130.

Q. That is right.

A. Well, there is no connection between the two, as I see it.

Mr. Biaett: Mr. Vesey, if you will permit an interruption, I think there is still an error on page 14 of Exhibit 12 to which you referred there.

By Mr. Biaett:

Q. Mr. Kuhls, with respect to the rates to Geneva from Fulton County, by referring to page 9 of Exhibit No. 4, will you tell me if there is one rate or if there are two rates to Geneva?

A. There are two rates.

Q. And in correcting page 14 of Exhibit No. 12, from $1.65 to $1.55, was that a proper correction?

[fol. 948] A. I corrected it to $1.55, which is the so-called going rate to Geneva. There is a higher rate proposed of $1.70, but $1.55 is proposed via the C. & N. W. and the M. & St. L.

Q. And the $1.65 rate which was formerly shown on that exhibit was the present rate to Geneva from Fulton County, which was increased 5 cents under the proposal, to make that $1.70, was it not?

A. That is right. So your $1.55 rate which I now show on page 14, as it was corrected, is an increase of 5 cents over the rate of $1.50, rather than a 10-cent reduction.

By Mr. Vesey:

Q. As I understand that answer, your rate is still $1.55, the going rate on that coal?

A. Yes, but the present going rate is not $1.65 as shown originally on page 14. It is $1.50.

Exam. Trezise: That is the Milwaukee rate?

The Witness: No. We don't serve Fulton County or Geneva. That is the rate via the C. & N. W. and M. & St. L.

By Mr. Vesey:

Q. Well, referring to your Fairbanks-Morse case, there wasn't any requirement in there with respect to increasing any one of those rates, was there?

A. Indirectly, yes. We couldn't increase Rockford in compliance with the Beloit decision and allow the present rates to stand at intermediate points, because that in our opinion would set up prejudices as between Rockford and these other points.

Q. Well, in other words, on this basis then 5 cents would [fol. 949] constitute prejudice, is that right?

A. It had the effect of reducing the hump that would result if we hadn't changed the rates to the intermediate points. The increase was graded back.

Q. But a nickel would constitute prejudice, as you just used it?

A. We had to reduce the increase as we went back, because if we increased all the rates 15 cents, why, we would finally end up at the first station next to the origin mine.

Q. How did your railroad determine, if you did determine, that the rates on Illinois coals to the affected territory were, one, not paying their fair share of the transportation burden, or, two, that those rates were discriminatory rates, in so far as interstate rates were concerned? How did you make that determination?

A. Well, we compared the present rates to Northern Illinois with rates prescribed by the Commission to Iowa and Wisconsin, and we assumed that the Interstate Commerce Commission in prescribing rates to Wisconsin and Iowa prescribed rates designed to share a fair proportion of the transportation burden; and that being the case, any rates lower than the Commission prescribed, a much lower level, did not pay its fair share of the transportation burden.

Q. Now, I take it, that in following that theory it then became unnecessary in your opinion to determine whether [fol. 950] or not, let us say, coals from Indiana into the affected territory had been increasing or decreasing over the period of the past five years, didn't it, or eight years, or whatever period you want to take?

A. Well, in my opinion, I don't think that would have to be considered.

Q. And so you didn't consider it, did you?

A. Not to the extent that it influenced our decision.

Q. And as a result you made no determination to ascertain the fact as to whether or not those coals had been increasing in the last eight years in their movement to the affected territory or whether or not they had taken business from their competitors in Illinois, did you?

A. Well, that is all shown in the record already.

Q. I submit to you it isn't shown in the record already. If it is, where is it?

A. We have the tonnages to representative points. As a matter of fact, it shows that the tonnages have increased from all origins.

Q. Do you mean to say that this record shows the increase or decrease in the movement of Indiana coals, let us say, to the affected territory?

A. Certainly.

Q. How is that?

A. Sure.

Q. To what points?

[fol. 951] A. To points shown in Exhibit No. 4.

Q. Will you turn to your Exhibit No. 4 and show me that.

A. Section 10—No, it isn't Section 10. It is Section 8. We show from Indiana, we show Illinois, Indiana and Western Kentucky, to DeKalb, Dixon, Freeport, Geneva, Rochelle, Rockford, Sterling. The total from Illinois to those destinations in the first six months of 1941 was 340,000 in round numbers; the first six months in 1942 it was 395,000; Indiana, first six months of 1941, 148,000, and the first six months of 1942, 181,000.

Q. In other words, your only comparison is the first six months of 1942 as against your first six months of 1941 and the last six months of 1941. Do you mean that that is the extent to which you made your study to determine the effect of the present rates upon the movement of coals to this territory? Is that the extent of it?

A. I said we did not consider it to the extent that it influenced our decision here. We just knew the general knowledge that the movement was increasing.

Q. Mr. Kuhls, don't you know and aren't you willing to say that as far as that exhibit is concerned, it is absolutely meaningless in so far as showing any fluctuations or variations in the movement of coals from any of the districts into this affected territory?

Mr. Biaett: I submit, Mr. Examiner, that the question is purely argumentative. The witness has put in an exhibit —.

[fol. 952] Exam. Trezise: He can say, no, he doesn't know that. He can answer that.

Mr. Vesey: That is very easy to say.

The Witness: I will answer no, if that will settle it.

By Mr. Vesey:

Q. Now, as a freight traffic agent for this railroad, you were fully familiar with the Interior Department's program in 1942 for the buyery and for the stockery of coal, were you not, Mr. Kuhls?

A. Yes, sir.

Q. And isn't it reasonable to assume that any disparity shown in that exhibit with respect to 1942 against 1941 might easily be due to that experience, in view of the fact you are only considering the first six months of the year?

A. Well, Mr. Vesey, my answer probably wasn't broad enough. If you will refer to Exhibit 9——

Q. Let us stay to the one we are on now, and answer my question on that, and then we will go to the next exhibit. Isn't that true?

A. That the increase in the first six months of 1942 over 1941 might be due to the stockery program?

Q. Yes, it is reasonable it might be due to that alone?

A. It so happens that is not the cause of it, because the production generally has increased as shown by Exhibit No. 10, Southern Illinois, for example, in 1941, being much [fol. 953] higher than in 1940.

Q. You mean the production of coal?

A. Yes.

Q. Now, coming back to my question, before we go off on that one, is your answer still the same, that the changes shown in Exhibit 4 could not be accounted for by the buyery program of the Interior Department in 1942?

A. It could be to some extent.

Q. And that being the case, you can't tell from any of the data that you have here in Exhibit 4 as to the effect of freight rates on the movement of coals to the affected territory, just confining yourself to the exhibit?

A. Not exhibit 4 alone, no.

Q. Now, when you go to Exhibit 10 that you are speaking about, that merely shows the increase on an overall basis of Illinois versus Indiana, doesn't it?

A. That is the production, yes.

Q. Why didn't you in your Exhibit 12, I believe it is, at page 20, show your Indiana production for the year 1942?

A. I obtained that information after this sheet was made up, but I didn't show it because my information is that the total production for the country is not definite; it is still estimated.

Q. What was the figure that you had for Indiana coals for the year 1942?

A. 25,470,000.

[fols. 954-967] Q. In other words, it is approximately almost a 7,000,000-ton increase 1942 over 1941?

A. Yes, about six million five.

Q. So when you come down to comparing years, 1942 against 1941, they are meaningless in so far as freight rates are concerned, if we are to give any effect to varying freight rates on the movement of coal, isn't that true?

A. I don't know that it is.

Q. You don't know whether that is true or not?

A. You said meaningless; I don't know that it is.

* * * * * * *

[fol. 968] Exam. Trezise: All right, let's continue. Do we have any questions of Mr. Kuhls?

Mr. Vesey: If the Examiner please, I think I commenced my cross-examination of Mr. Kuhls yesterday when we recessed, and I believe the last question that I have asked Mr. Kuhls was with reference to page 14 of Exhibit 12, and that particular time with respect to movements of coals into the affected territory from the several origin groups involved in this case.

W. H. Kuhls resumed:

Cross-examination (Continued).

By Mr. Vesey:

Q. Now, along that same line, Mr. Kuhls, do you know whether or not any study was made of any kind or character

to ascertain what coals from the various Illinois origin groups were moved into the affected territory and also [fol. 969] to determine whether or not the movement of those coals over the past ten years has increased or decreased and whether or not that had increased or decreased in the same proportion as the increase or decrease in coals of other origin groups of Illinois and Indiana into that territory?

A. No special investigation was made, outside of the showing already made in the record; but of course all the railroads have their general knowledge of what was going on.

Q. And as you—I mean by "you" your railroad—view the situation in this affected territory, I take it that it is your determination that your rates on Indiana coals to the affected territory are on such a level as to produce the fundamental result enunciated by you in the beginning, that is, preserve for those coals the necessary markets in this territory?

A. I do not believe that this adjustment will affect the movement of any of these coals in the territory.

Q. But as far as your coals are concerned, you think there is sufficient to preserve those markets for those Indiana coals?

A. I believe so, yes.

Q. Now, following your same principles and turning to page 14, again, of Exhibit 12, and looking at the rate to Geneva which is here reduced from $1.65 to $1.55, that is the going rate, I presume from your testimony that that is indicative of the belief of some carriers that that rate [fol. 970] should be reduced in order to bring about what, the preservation of markets for Fulton-Peoria coals?

A. I thought it was made clear yesterday that we are not proposing a reduction to Geneva. We are proposing a 5 cent increase. The printed figure here of $1.65 is not the so-called going rate. The going rate is $1.50.

Q. Oh, I see. In other words, then, in line with, I believe, Mr. Biaett's suggestion, the $1.65 rate shown there is not the going rate, is that correct?

A. That is correct.

Q. But the going rate is the $1.50 rate?

A. That is right.

Q. Both of which have been increased a nickel?

A. That is right.

Q. In increasing these rates, did you use some percentage of the first class rate as determinative of the amount of the increase that should have been requested by these carriers?

A. We did not.

Q. You did not?

A. No, sir.

Q. In other words, whether it was 10, 7 or 11 was immaterial to the carriers in making their determination?

A. Cents per ton or percentage of first class?

Q. Percentage of first class.

A. That is right.

[fol. 971] Q. Now, if we were to use the per cent of the first class rate as the yardstick for purposes of comparison with other commodities as shown on page 13 of Exhibit 12, would we not have to confine our comparison to scrap iron as shown on that exhibit?

A. I do not think so.

Q. Well, isn't scrap iron the only one, so far as the evidence here is concerned?

Exam. Trezise: Excuse me a minute.

(Short interruption.)

Mr. Vesey: I will restate my question.

By Mr. Vesey:

Q. Mr. Kuhls, taking the commodities shown on page 13, the only commodity for which there is shown therein any evidence as to the nature of the movement or as to the basic facts upon which the Commission operated in reaching its decision is the case of scrap iron, isn't that true, shown on the face of page 13?

A. I wouldn't know, Mr. Vesey.

Q. Well, isn't it true, Mr. Kuhls, that there is no information shown on page 13 as to, one, the weight of the commodity handled; two, the conditions under which the commodity was handled; or, three, the locale of the commodity in so far as the operation of the decision is concerned, is that true?

A. That is right.

Q. And that is true except for scrap iron, where there is some indication of the processes of the governing body in [fol. 972] arriving at its decision, in that it shows a declining

per cent as the weight of the commodity hauled is increased, isn't that true?

A. Yes, that is true.

Q. In other words, if we follow it logically, the thread of what apparently was the decision there in that case, where we have 15 per cent, when the minimum weight of 50,000 pounds, 12½ per cent when it was 75,000 pounds, presumably it would have been on a 10 per cent basis at 100,000 pounds, isn't that right?

A. I wouldn't know, Mr. Vesey.

Q. I mean following logically the decision as you show it, isn't that correct?

A. Not necessarily.

Q. It doesn't necessarily follow?

A. No.

Q. You mean by that you don't know what they would have found on a 100,000 pound basis, is that it?

A. No, I wouldn't know.

Q. Well, if they had followed the same rate of progression, 10 per cent would have been shown, would it not, for the 100,000 pounds?

Mr. Hunter: I object to that. Now, that is really arguing with the witness. He has answered it. He said he didn't know what the Commission would do.

Exam. Trezise: If the witness knows the answer to that, [fol. 973] I think he may answer.

The Witness: I don't know the answer to it.

Mr. Hunter: In other words we can argue the case on brief.

Exam. Trezise: Rather than with the witness, you mean?

Mr. Hunter: Yes.

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Proceed.

Mr. Vesey: What was the answer to the last question?

(Record read.)

By Mr. Vesey:

Q. Well, if we proceeded logically on that basis, Mr. Kuhls, we would then have a comparable load, that is a 50 ton car of coal at a rate 10 per cent of the first

class rate, would we not, for scrap iron, as shown by the decision set forth by you on page 13?

A. I can't say whether that would be logical or not.

Q. Would you say it was unreasonable to arrive at that conclusion from the evidence set forth on page 13 by you?

A. Either way would be merely an assumption.

Q. You wouldn't say that was an unreasonable conclusion to draw, though, would you, Mr. Kuhls?

Mr. Hunter: The witness has stated several times he doesn't know.

Mr. Vesey: I am asking him if that is an unreasonable conclusion to draw.

[fol. 974] Mr. Hunter: I object, Mr. Vesey, to your arguing with the witness. Let's argue it on brief or before the Commission later, but now you are arguing with the witness. Whether it is logical or not is a question for the attorneys. There may be a lot of facts and circumstances in connection with shipments of scrap iron——

Mr. Vesey: I thought perhaps we might just reason together in a situation like this.

Exam. Trezise: I think those are deductions that perhaps you could capitalize on in your brief. The witness says that he hasn't drawn that conclusion.

Mr. Vesey: I thought the conclusion was so obvious, but if it be questioned, all right.

Mr. Hunter: I think these things are merely put in there for the purpose of having something to argue about in the brief.

Mr. Vesey: But not at the hearing, you think, Mr. Hunter?

Mr. Hunter: That is, a reasonable amount of arguing at the hearing.

By Mr. Vesey:

Q. Mr. Kuhls, assuming for the moment that the logic which I have suggested might follow in connection with scrap iron on page 13 is correct, and then addressing yourself to the level of your coal rates, it would then appear, would it not, that rather than your coal rates being lower in comparison with these other commodities in the determination of the Commission in connection with them on specific matters, that the coal rates were, in effect, as [fol. 975] from the several origin groups, Indiana and

Illinois, higher than the prescribed rates by the Interstate Commerce Commission on the other commodities?

A. No, your scrap iron loads heavier than 75,000 pounds, loads heavier than coal in most instances.

Q. Do you have any reason to think or to believe, Mr. Kuhls, that if the Interstate Commerce Commission had, in the several cases referred to by you on page 13, considered weights up to 50 tons per car, namely, 100,000 pounds, that they would have prescribed a rate in excess of 10 per cent of the first class rate? Do you have any reason to believe that?

A. Yes.

Q. And what is that reason?

A. The Interstate Commerce Commission knew, when it prescribed 12½ per cent for 75,000 pound minimum, that scrap iron loads heavier than that, as a general thing.

Q. Did they prescribe a different rate for the 100,000 pounds?

A. No.

Q. Do you know?

A. As far as I know, they didn't.

Q. Oh, you mean you are just guessing, now, as to what 100,000 pounds would be, is that right?

A. No, I am not guessing. I said so far as I know they have not prescribed less than 12½ per cent for minimums above 75,000.

[fol. 976] Q. Well now, but the answer is, is it not, Mr. Kuhls, you do not know what they prescribed for 100,000 pounds, is that not right?

A. I don't know if they prescribed anything.

Q. And as far as you know, it may have been 8 per cent, 7 per cent, 10 per cent or 20 per cent for 100,000 pounds, isn't that right?

Mr. Kaier: Mr. Examiner, this is getting all messed up. The point Mr. Kuhls was making was that this was the minimum weight and the Commission would obviously also consider the average loading.

Mr. Vesey: Are you familiar with the comparisons?

Mr. Kaier: Referring to the fact that the witness testified that 75,000 pounds was merely a minimum weight and not the average loading, just in the same way that 50 tons is not the minimum weight on coal.

Mr. Vesey: I don't believe that is the question that is before the witness now.

Mr. Kaier: It was until you switched it.

Exam. Trezise: Oh, I think the witness may answer the question if he has something enlightening on it that will help you, Mr. Vesey.

Mr. Vesey: Yes, I would like to have that answer.

The Witness: Whether or not I knew——

By Mr. Vesey:

Q. Whether or not you know whether there was a rate [fol. 977] prescribed on 100,000 pounds in the case of scrap iron.

Mr. Kaier: That is on a minimum weight of 100,000 pounds?

Mr. Vesey: Right.

The Witness: I will have to answer that that the Commissioners did not prescribe a different level for the minimum of 100,000 pounds.

By Mr. Vesey:

Q. I thought you told me just a moment ago that you didn't know.

Mr. Hunter: I object to that. The answers are perfectly consistent and if Mr. Vesey will have the answers read or consider them carefully, the witness is answering clearly. Now, Mr. Vesey is muddying the waters here, I think.

Exam. Trezise: Never mind, now. The Examiner understands that the answers are not inconsistent. If they are, you can show that in your brief. Go ahead with your questioning.

Mr. Vesey: It is your understanding——

Exam. Trezise: It is my understanding that his answers were consistent.

Mr. Vesey: My recollection of what he said to Mr. Wilkinson was he didn't know; secondly, he said to me a minute ago he didn't know, and how he says that the Commission did not prescribe a rate on 100,000 pound minimum.

Mr. Hunter: I think Mr. Vesey's trouble is that he didn't carefully listen to the witness' answers. As I have listened, they have been perfectly consistent.

[fol. 978] Exam. Trezise: Have you finished with that question?

Mr. Vesey: I haven't finished. I didn't get the answer to the last question. Does he or does he not know, so I may follow his answers.

Exam. Trezise: He answered your last question.

Mr. Vesey: If the Examiner please, he said, "I shall have to answer that question this way." Now, in the light of his previous answers, that was logical, I will admit that, but I want to know, does this witness know whether or not the Interstate Commerce Commission, in the cases shown, prescribed a rate on 100,000 pound minimum for scrap iron.

By Mr. Vesey:

Q. Now, did they or didn't they? It is yes or no.

A. If I may consolidate the answers I made, I don't know——

Mr. Vesey: Thank you.

A. —that the Commission prescribed less than 12½ per cent as minimums up above 75,000, and therefore I would have to answer your last question that they did not.

Mr. Vesey: Well, now, if the Examiner please——

By Mr. Vesey:

Q. Do you have any commodity rates on a gross ton basis with 100,000 pound minimum weight; do you know of any?

A. On coal?

Q. No, scrap iron.

A. Our company does not.

[fol. 979] Q. I say do you know of any?

A. No, sir.

Q. You don't know of any?

A. No, sir.

Q. Does your railroad have on scrap iron a gross ton rate between Chicago and the Tri-Cities on scrap iron, 100,000 pound minimum weight, Mr. Kuhls? By "you" I mean the Milwaukee Railroad.

A. If we have, I don't know it.

Q. Mr. Kuhls, did you sit in with the carriers in their several joint meetings in connection with the determining

of the points to be used in computing mileages for the several origin groups to the destinations in the affected territory?

A. I did.

Q. In computing your mileages from Indiana, did you use all the points in the origin groups as shown by the tariffs of the various railroads?

A. We did.

Q. In other words, so I may follow you, what you did was, you took the origin groups largely in Brazil-Clinton, in the tariff of the Milwaukee Railroad, and used the mileages from each of these points to the various destinations?

A. Yes, sir.

Q. In other words, you didn't break up any origin groups where the points shown in your tariffs listed them [fol. 980] as being under the origin group as a whole?

A. No, we took each tariff origin shown in the tariff.

Q. Now, did you do that also for the Linton-Sullivan Group?

A. For all groups in Indiana, Illinois and West Kentucky.

Q. You did that for all groups?

A. That is right.

Q. At least, that was the intendment of those carriers?

A. That is right.

Q. There was no consideration to doing otherwise, is that right?

A. No.

Q. In other words, I take it it was your opinion that to do otherwise would have been unfair to the origin group that would be so affected, is that right?

A. Yes, we followed the formula used in the Midland Electric Cases.

Q. And I believe that was the agreement that was arrived at at the pre-hearing conference between carriers and shippers in this proceeding?

A. It was.

Q. Do you have, Mr. Kuhls, your own tariff G. F. D. No. 13833-H, which has Illinois Commerce Commission number 593, I. C. C. number B-7238 before you?

A. I don't have it with me, no, sir.

Q. I will show you, Mr. Kuhls, a document which purports to be the tariff which I have just referred to and I will ask [fol. 981] you if that is the tariff of your railroad here.

A. Yes, it is.

Q. That is the tariff that is now in effect?

A. Yes.

Q. That was in effect, that tariff was in effect in the fall of 1942?

A. Yes, sir.

Q. I ask you to turn to page 6 of that tariff and tell me in what origin group is the origin point Atkinson?

Mr. Kaylor: What state?

Mr. Vesey: Illinois.

The witness: It is shown in this tariff as being in the Fulton County Group.

Exam. Trezise: That is going to some place, some destination, certain destination?

Mr. Vesey: That is the affected territory, points in the affected territory.

Exam. Trezise: To the affected territory?

Mr. Vesey: That is right.

By Mr. Vesey:

Q. Now, Mr. Kuhls, would you direct your attention to page 4 of your Exhibit No. 12. Now, that shows, does it not, the various points in Western Iowa where the differential Fulton County under Southern Illinois is 60 cents, as determined by the old rate as prescribed by the Interstate Commerce Commission in the Midland case, is that correct? [fol. 982] A. Yes, sir.

Q. Now, roughly speaking, the haul, that is the maximum haul involved in each of those destinations is approximately 600 miles, isn't it?

A. From Southern Illinois, yes.

Q. From Southern Illinois. In other words, take your first point, Alton, Iowa. The mileage there is 697.2 miles, is that right?

A. That is right.

Q. And I believe that you show that the average difference in mileage between Fulton County and Southern Illinois to the several destinations shown on page 4 is 226 miles, is that right? I think that was the average that you gave.

A. Yes.

Q. In other words, taking the difference in miles as against the distance hauled on the maximum haul, in that

instance you would have the distance differential approximately one-third or 33 per cent of the mileage traversed by the main haul from the compared point, namely, Southern Illinois?

A. Yes, sir.

Q. Now, if that relationship of the difference to the haul increased, what, in your opinion, should happen to the differential? Should it increase or decrease?

A. If there was a very material difference, it might increase.

Q. You say it might increase? In other words, if we [fol. 983] went from, I say, a 33 per cent relationship to a 60 per cent relationship, you would expect the differential in the rate to widen accordingly, would you not, to increase?

Mr. Kaier: He said it might, didn't he?

Mr. Vesey: That is right; I am trying to find out his answer.

Mr. Kaier: Do you want him to repeat the last answer?

Mr. Vesey: Read my question back, please.

(Question read.)

Mr. Vesey: That is to increase.

The Witness: Well, you would have to take more things into consideration than just the increase in the mileage difference.

By Mr Vesey:

Q. No, I mean just assuming, now, all other things are equal. I am asking, in effect, a hypothetical question.

A. Well, it is rather difficult to answer a hypothetical question because I know of so many rates, adjustments, where that wouldn't happen. It is hard to say hypothetically. You have to compare territory and distance.

Q. All right, the same territory, Mr. Kuhls, the same transportation conditions and everything else. All other things being equal, isn't the logical result of the situation which I have given you an increase in the differential? That is, as you have your change in the relationship of distance hauled from 33 to 60 per cent?

[fol. 984] That would be rather an extreme change. It might under those conditions.

Q. Certainly. And you would expect it to follow, as a rate-making expert, now, wouldn't you?

A. I thought we went over that yesterday.

Q. Just forget about that. We are right on right now.

A. I would have to take all the things into consideration, not just the difference in mileage.

Mr. Vesey: Please, Mr. Examiner, I would like to get the answer so that I can have at least some kind of a logical cross examination.

By Mr. Vesey:

Q. I just want to get your theories, Mr. Kuhls, that is all.

A. Not as an abstract proposition I wouldn't answer it, cover any hypothetical question.

Q. All right, as a rate-making expert, I will ask you if you would expect the revision to follow, that is, as the relationship in miles, the difference against the total increased, would you expect the rate differential to decrease?

A. If rates were made on mileage, yes, naturally.

Q. And you would expect it to decrease?

A. Yes.

Q. The differential?

A. If all the rates were made on mileage, yes.

Q. Let's just bring it down to an actual case. Miles and [fol. 985] everything else being equal, if you had a 5 cent differential for a difference in distance of 10 miles over the mile haul, would you expect to maintain the 5 cent differential where there was a difference of 10 miles over a 15-mile haul from the longest haul?

A. I wouldn't know how to answer that. I know of no such situation.

Q. So that unless there was something peculiar, you would think that that would be a good rate adjustment, is that right, or a proper one?

Exam. Trezise: Well, I don't know why we should spend so much time on it.

Mr. Vesey: If the Examiner please, it is a most important point.

Exam. Trezise: Let the Examiner ask Mr. Kuhls this question:

By Exam. Trezise:

Q. Ordinarily as the distance increases, the differential between groups will decrease? Ordinarily, that is the

ordinary method of making rates, isn't it true? It doesn't always do it. Oh, there are thousands of exceptions, but ordinarily that is the method of making rates?

A. That is the difference between the two origin groups, not the distance to destination?

Q. Yes, two origin groups. As the distance increases from two origin groups, the differential with respect to the [fol. 986] one group compared with the other naturally decreases. That is the method of making rates, isn't it, ordinarily? I don't see that that is such a difficult question.

A. Well, it does exist but I wouldn't say it was ordinary.

Exam. Trezise: All right. There you are.

The Witness: It was not done in the Midland Electric case.

By Mr. Vesey:

Q. Just where wasn't it done in the Midland Electric case, Mr. Kuhls?

A. Turning to page 2 of my Exhibit 12, it will be readily seen. Mileage difference, 32 miles; differential, 10 cents. Another instance, mileage difference, 31 miles, differential, 5 cents.

Q. And that is what you had reference to in your answer?

A. No, that is just one of the instances where that exists.

Q. Well, all right, let's take pages 4 and 5 of your Exhibit, where we have your prescribed differentials of 50 and 70 cents. And there, as to the 70 cent differential, you have distances in the neighborhood of 400 miles, do you not, Mr. Kuhls, for the Southern Illinois haul?

A. It was done in that instance, yes.

Q. And it was logically carried out throughout that whole territory that forms the northern part of the State of Iowa as shown by your map attached to your Exhibit 12, does it not, on page 1?

A. In that case it does, yes.

Q. Why do you have any hesitancy in admitting that, Mr. Kuhls, that as a matter of rate-making and as a matter [fol. 987] of interpreting the decisions of this Commission, that where you have the proposition I have just proposed to you here as a general basis that the results have logically followed? What is the hesitancy in it?

Exam. Trezise: Your question is not being confined to coal alone? You are covering other commodities?

Mr. Vesey: I am covering coal and everything else as a matter of opinion of a rate-making expert, whose opinion I have a great deal of respect for, and I would like to get it into this case.

The Witness: That principle is applied in some cases and it is ignored in others.

By Mr. Vesey:

Q. And you are going to apply it to Brazil-Clinton as against Linton-Sullivan on your own railroad and you have applied it, generally speaking, throughout your hauls, haven't you?

A. The mileage relationship between those two groups is constant.

Q. I am just talking about that principle involved here. You have applied it to Brazil-Clinton as against Linton-Sullivan, haven't you?

A. We only have one differential.

Q. You mean to your nearby points in Indiana you only have one differential Brazil-Clinton against Linton-Sullivan?

A. I thought we were talking about group rates.

[fol. 988] I am talking about your general pattern of making rates.

A. Are you talking about short-haul rates now?

Q. I don't care whether you take short-haul or long-haul. The principle, I think, is the same, is it not?

Mr. Kaier: Of course, if you say Brazil-Clinton against Linton-Sullivan, it has just got to be group rates.

The Witness: When it is short-haul, there are other things taken into consideration besides difference in mileage.

By Mr. Vesey:

Q. So you won't concede that general principle which I referred to?

A. I think it is all right as a theory, but it hasn't been applied.

Q. Would you say it hasn't been applied—you mean by your railroad?

A. No, in rate adjustments generally.

Q. In rate adjustments generally it has not been applied?

A. No, there are lots of exceptions.

Q. Now, just assuming for the moment you did apply it, and let's take your evidence that you have given on page 12, and then turning to, say, for example—I mean Exhibit 12—let's take Janesville, Wisconsin. I will ask you to tell me, one, what is the mileage from Southern Illinois to Janesville and, two, the mileage from Fulton County to Janesville.

Mr. Biaett: I object to the question as being beyond the scope of any of the issues presented in the proceeding [fol. 989] before the Commission at this time.

Exam. Trezise: Well, this hypothetical question is still in the air, as I understand it. He wants to point out some instance outside of this case where it is true. I don't know, perhaps that is all right—What is the distance from Southern Illinois to Janesville over the short tariff route, is that what you mean?

Mr. Zoll: Page 10.

Mr. Hunter: Page 10 of Exhibit 12 is what I think he is directing attention to.

The Witness: The difference between—did you want the mileage?

By Mr. Vesey:

Q. That is right.

A. Page 10 shows the average distance via short tariff routes from Fulton County, 186.8; Southern Illinois, 422; the difference, 235.2.

Q. Now, the differential, Fulton County, or the difference, whichever you want to call it, between them, Fulton County to Janesville and the Southern Illinois rate to Janesville is 79 cents, is it not, Mr. Kuhls?

A. That is right.

Q. And in this instance you have the difference in mileage as compared to the total miles hauled ranges in the neighborhood of about 45 per cent?

A. Do you want me to confirm that?

[fol. 990] Q. I say, roughly, it is about that?

A. I haven't figured it out.

Exam. Trezise: Less than 50 per cent, anyhow.

Mr. Vesey: It is a little less than 50 per cent.

By Mr. Vesey:

Q. Now, if you followed the theory of rate making shown in the Midland case, reflected by your map, on page 1, the differential from Fulton County under Southern Illinois in your affected territory would be in the neighborhood of 79 cents or more, would it not?

A. No, it would be 70 cents.

Q. What?

A. It would be 70 cents instead of 79 cents.

Q. 70 cents. The expedition with which you gave me that answer prompts me to ask you this question: you mean you consider a 70 cent Fulton County under Southern Illinois proper? Is that summing the thing up?

A. No, you refer to the Midland case. I said if the Midland case principle was applied, the differential would be 70 cents instead of 79 cents.

Q. In other words, it would be 70 cents instead of 79 cents if the principles of the Midland case were followed as you interpret them, is that right?

A. The differential of 70 cents was prescribed in the Midland case for a distance difference of 239 miles; therefore a difference of 235 miles at Janesville should not call for a [fol. 991] differential of 79 cents. 70 would be more proper.

Q. I say, interpreting the Midland case as you interpret it, now, the differential Fulton County under Southern Illinois in that territory would be in the neighborhood of 70 cents, is that right?

A. Exactly 70 cents.

Q. It would be just exactly 70 cents?

A. That is right.

By Mr. Stadell:

Q. Pardon me, are you talking now about Janesville or Northern Illinois?

A. Janesville.

Mr. Stadell: Janesville. That is what I thought.

By Mr. Vesey:

Q. And if you followed the logic of the Midland case, that would carry to the contiguous destinations in that territory, right?

A. That is correct.

Q. And as we went further from Fulton County, that differential would increase, right? I mean would decrease?

A. I don't know there because you would go beyond the scope of the Midland case.

Q. Would you go beyond it? By looking at your map, on page 1, where you go from Fulton County to points away from it, your differential runs 70 out to 60 cents as you go straight west, and 70 down to 50 cents as you go southwest, doesn't it?

A. Your maximum——

[fol. 992] Q. Looking at your map, on page 1.

A. The map doesn't show the mileage. You have to look at sheet 2.

Q. You don't have to look at the mileage, do you? It is obvious from the map. You know where Fulton County is located as an origin group?

A. Yes.

Q. And you know the nearest point to the west the 70 cent differentjal is shown in Iowa?

A. Yes.

Q. And as you go further from Fulton County, that differential decreases down to 60 cents, as you go straight west, doesn't it?

A. Yes.

Q. And as you go southwest, it goes to 50 cents?

A. Yes.

Q. And as you move back to the Tri-Cities from Fulton County, it goes up to a dollar, doesn't it, that differential?

A. I think that is a rate difference and not a differential.

Q. All right, either one you wish, difference or differential. The difference in the rates is a dollar in that instance, isn't it?

A. That is right.

Q. And when you come down to Galesburg, the difference is $1.20, isn't it, coming still closer to Fulton County?

A. I think that is the figure.

[fol. 993] Q. Now, if 79 cents would be correct at Janesville from Fulton County as against Southern Illinois, then as we would go north of Janesville we would expect that differential to decrease in line with the principles of the Midland case as evidenced by your own map, isn't that it?

A. If you went beyond Janesville, you would have the same mileage difference between the two groups as at Janesville, so that wouldn't call for any change in the——

Q. You think that the differential ought to be 79 cents as we go further north into Wisconsin, is that right?

A. No, sir, I didn't say that.

Q. Well, I mean following the principles of the Midland case now, Mr. Kuhls, and confining yourself right to it. As you go north of Janesville, further from Fulton County, would you expect the differential to increase or decrease?

A. I would expect it to remain constant.

Q. You would expect it to remain constant?

A. Yes, sir.

Q. All right. Now, as you come from Janesville down towards Fulton County, following the principle of the Midland case, would you expect the differential to increase or decrease?

A. Well, you are getting into short-haul rates again.

Q. I don't care whether it is short-haul or what it is. We used two short-haul rates in our comparisons, by applying rates from Fulton County to Iowa and adjacent points.

[fol. 994] A. The rates prescribed to Iowa in the Midland case weren't short-haul rates.

Q. Will you give me an answer to my question? Would you expect them to increase or decrease the differential?

A. You are tying it down——

Q. Or difference, either one. I don't care how you use it, interchangeably or one way.

A. Your question was tied down to the Midland case and I think my answer was proper.

Q. All right. Just so we won't be so technical, just to get your opinion here, which we consider so valuable in this record, referring to the Fulton County movement and the differences and differentials, ~~as we go towards~~ Iowa from Fulton County, will you please tell me what the differential or the difference, Fulton County as against Southern Illinois, moving into the territory north of Fulton County toward Wisconsin, following those principles would you expect the difference or the differential to increase as we come down to the Fulton County mines?

A. Not necessarily, no sir.

Q. Not necessarily? When you say "not necessarily," what do you mean?

A. Because that is short-haul territory.

Q. Is that the only answer and the only reason you have for making that particular answer?

A. That is right.

[fol. 995] Q. Now, let's go over to Indiana, since you have such qualms about the situation going north from Fulton County. Let me ask you, as you go on your own line, either out of Brazil-Clinton or out of Linton-Sullivan or out of the little group down in the Princeton-Ayrshire District, if it isn't true that the difference, one group as against the other, if the difference in your rates doesn't increase as you approach the origin group which we could use for purpose of comparison?

A. I don't think you could use it as a comparison because those rates in Indiana are on a mileage scale.

Q. On a mileage scale? But the result is the same, isn't it, Mr. Kuhls, as the one we have been talking about?

A. If you put the Illinois rates on a mileage scale, yes.

Q. But I say the result is the same in so far as the varying of the difference or differential is concerned, isn't it?

A. There are no differentials in those short-haul rates.

Q. I didn't say differential. Using either the difference or differential, the result is the same, isn't it? I don't think the——

A. There is a variation in the differences, yes, naturally.

Q. Certainly there is, and as you approach any origin group you want to take, comparing it with another, that difference increases as you come to the mines, doesn't it?

A. Yes, there is a change in the differences.

Q. And it is a general plan of rate-making that you have [fol. 996] in Indiana in respect to all the mines on your railroad, is it not?

A. Those rates you are talking about are Commission-made rates. I don't know what we call what the carriers have done voluntarily, but what the carriers did voluntarily was different than exists at the present time, because the present rates are Commission-made.

Q. Will you give me just one reason, Mr. Kuhls, why the same principles in rate-making should not be applied to Fulton County and the territory involved in this case as have been applied, one, by your own railroad with respect to the Indiana coals, two, by the Commission which you have reference to in prescribing rates for your railroad, or three, if we go to basis of mileage scales?

A. And put the rates on the mileage scale?

Q. Take any basis you want to. Give me any good reason why the principle shouldn't be applied in this territory.

A. Well, we are not advocating it.

Q. That is not my question, is it, Mr. Kuhls?

A. Well, we are not advocating the principle to which you refer.

Q. Do you understand my question?

A. I thought I did.

Q. I asked, now, do you know of any good reason why the same principle of rate-making should not be applied from Fulton County into the territory involved in this case as has been applied by, one, your railroad, that was the Indiana [fol. 997] mines, either short-haul or long-haul territory or, two, by the Commissions with respect to those rates, short-haul or long-haul. Now, do you know of any reason why the same principle shouldn't be applied?

A. And I said that contemplated a mileage scale.

Q. All right, I said do you know of any reason why the principle shouldn't be applied in this area?

A. No, if you want to put the rates on a mileage scale, it could be done.

Q. Now, whether they are put on a mileage scale or not on a mileage scale, is there any reason why the principle shouldn't be applied?

A. I don't know of any.

Q. Thank you. In other words, it doesn't make any difference whether it is the Milwaukee Railroad that is trying to protect its customers or the Burlington, the principles should be the same, isn't that true?

Mr. Biaett: I move the statement be stricken.

Mr. Kaier: If the facts are the same.

Exam. Trezise: That is a question.

Mr. Biaett: Is it a question or——

Exam. Trezise: He said, "isn't it?" That makes it a question.

Now, before we get away from all that, the Commission wants to keep this straight. The differential of Southern [fol. 998] Illinois over the Peoria Group to most of the destinations in Wisconsin is 70 cents, isn't it, or do you know that?

The Witness: It varies, Mr. Examiner.

By Exam. Trezise:

Q. Then you can answer my question in the affirmative. The 70 cent differential from Southern Illinois over Fulton, approved in the Midland case, as shown by report—this is a

question—actually applies for excess distances over those from the Fulton-Peoria Group ranging from 140 miles at Hampton, Iowa, to 290 miles at Melbourne, Iowa. The Commission said that at page 198 in the Fairbanks Morse case, out of which these proceedings come.

Now, does that indicate to you that there is a principle of changing the differentials for the shorter distances as compared with the longer distances? You have a variation here in mileage of 140 miles to 290 miles.

A. That is quite a wide variation. It would appear that the distance progression isn't very controlling.

Exam. Trezise: That is all.

Mr. Hunter: Is that all with the witness?

Exam. Trezise: Mr. Vesey has some questions. Mr. Vesey, perhaps we should take a few minutes recess here.

(A short recess was taken.)

Exam. Trezise: All right, gentlemen, when you are ready we will continue.

By Mr. Vesey:

Q. Mr. Kuhls, I have just one or two questions on [fol. 999] your testimony with respect to the 23130 case, that is the last 13th Section case in this territory. As I understand your testimony, your level of rates from mines in Indiana on the Milwaukee Railroad are today 17 cents a ton lower than they were at the time the Indiana rate structure was compared with the Illinois rate structure in that case, is that correct?

A. Yes, as far as that particular case is concerned, that is true.

Q. So comparing the present-day conditions as against the conditions which were in existence at the time of that case, your level of rates in Indiana on mines on the Milwaukee Railroad is 17 cents a ton lower than the then compared levels, Indiana as against Illinois?

A. That happened to be the difference in the rates at that time, yes.

Q. And since that time there has been a 15 cent increase which you referred to, but that increase was applied to both Indiana and Illinois, was it not?

A. Yes, sir.

Q. So that that 15 cent increase, of course, did not change or has not changed the fact that today mines on the Milwaukee are 17 cents lower than the Illinois level Indiana as against Illinois at the time of the 23130 case?

A. No, sir.

Q. Now, going to pages 21 and 22 and 23 of your Exhibit [fol. 1000] 12, on page 21 you show two of the suspended points in so far as Illinois coals are concerned.

A. I do.

Q. And those are the only two suspended points so far as Illinois coals are concerned that are shown on the comparisons set forth on 21, 22, 23?

A. Yes, sir.

Q. Then on page 22, you have one other suspended point, but that applies only to Indiana, namely, Beloit, Wisconsin?

A. Yes, sir.

Q. Now, taking what I presume to be the purpose of this showing, namely, competition inter and intrastate, I will ask you, first, to direct your attention to page 21. What concerns shown on that page use coals produced from the Fulton-Peoria District?

A. My information is that the W. T. Rawleigh Company of Freeport do; just the two points on——

Q. That is right. That page 21, the suspended points.

A. I have some where the origin of the coal is unknown. It is just Illinois coal or Indiana coal. The specific origin group isn't shown. So that that is the only one I can definitely say uses Fulton County coal, according to my information.

Q. That is the only point in the suspended territory using Fulton County coals that you know of, isn't that right?

A. Yes; definitely yes.

Q. I will ask you to assume this to be the fact, which I [fol. 1001] will state to you now is the fact and which will be shown subsequently, that company used in 1942 848 tons of Fulton County coal. It used no Fulton County coal, Fulton-Peoria coal, in 1941. Is that the burden, then, on interstate commerce, so far as Fulton County coal, which the carriers in this case are complaining of?

A. No, beause, as I stated on direct, all the industries are not listed because some purchase coal from retail dealers and we have no way of determining where that coal origi-

nated, so there may be others; but as far as these pages are concerned, I think that is correct.

Q. You mean that the carriers—I am referring, speaking interstate-wise, are complaining against producers in Illinois in so far as they are shippers over railroads intrastate, on the basis of coal that moves by truck from mine-mouth to consumer, through retail yards?

A. No, I didn't say that.

Q. Well, confining ourselves now to rail competition, do you know of any other competition suffered by interstate carriers of Fulton County coals moved all rail than that which moves to the W. T. Rawleigh Company?

A. That is only part.

Q. I am asking you, do you know?

A. Not definitely, no, I don't.

Q. With what company in the compared territory does [fol. 1002] the W. T. Rawleigh Company compete?

A. I didn't say it competed with any.

Q. Then is it true that so far as you know, Mr. Kuhls, there is no competition as between the user of Fulton County coal in the suspended territory and any concern in the compared territory?

A. So far a my present information is concerned, yes.

Q. Now, let's take the same proposition with respect to Northern Illinois coals as differentiated from the Fulton-Peoria origin group coals, and if I were to take you company by company through the compared group, would your answers be the same as they have been with respect to the Fulton County coal?

A. They would.

Q. And would they be the same with respect to the Springfield coals?

A. They would.

Q. And would it be the same with respect to the DuQuoin coals?

A. No, they wouldn't.

Q. All right, what would be the difference, then, in the case of DuQuoin?

A. I see one here I recognize as the DuQuoin Group, J. I. Case Company at Rockford.

Q. J. I. Case at Rockford?

A. Manufacturing farm machinery.

Q. That is the only one, I take it, that you know of with respect to DuQuoin coals?

[fol. 1003] A. That is all that I have before me.

Q. I take it that is all you know about those, isn't it?

A. With the information before me, yes.

Q. How much DuQuoin coal did J. I. Case Company use in 1942?

A. I don't have that information.

Q. How much in 1941?

A. I don't have that information for any years.

Q. For any year?

A. No, sir.

Q. You don't know whether or not their purchases of DuQuoin coal, then, have increased or decreased, do you?

A. I didn't check into that.

Q. How is that?

A. I didn't check into that.

Q. In other words, as far as you are concerned, it might very well be that there has been a gradual loss of that coal from DuQuoin to some coal outside of the State of Illinois, isn't that true?

A. Yes. They were buying that coal during February and March of this year.

Q. So then, as a matter of fact, Mr. Kuhls, when you take an exhibit such as you prepared here, pages 21, 22 and 23, it doesn't show a single thing with respect to, one, competition Illinois as against Indiana or Illinois as against the outside world, as far as intrastate versus the interstate [fol. 1004] movement is concerned, does it?

A. With respect to the competition between manufacturing industries?

Q. How is that?

A. You mean with respect to the competition between manufacturing industries?

Q. No, I am referring now with respect to burden on interstate commerce; it doesn't show a thing, does it?

A. This isn't the entire burden on interstate commerce that we allege.

Mr. Hunter: I object to that question because the purpose of these pages is not to show a burden on interstate commerce.

Mr. Vesey: What is the purpose of this exhibit, then?

Exam. Trezise: Do you want the witness to answer that?

Mr. Hunter: The witness has answered that on his direct.

Mr. Vesey: I am asking counsel, what is the purpose of these three pages in this exhibit? You put it in through your witness. What is the purpose of it?

Mr. Hunter: Will you repeat the answer?

Mr. Vesey: I would like to have a statement on it, Counsel.

Mr. Hunter: I am not on the witness stand. I would rather have it from the witness. I am not on the witness stand. I am objecting to the question. If you want the witness to repeat the answer he made on direct as to the purpose of these pages, I have no objection.

[fol. 1005] Mr. Vesey: I thought I understood the purpose of it from the witness when he put it in, but I gather from your objection that wasn't the purpose. Now, if it isn't the purpose to show here facts which have some probative value with respect to establishing——

Exam. Trezise: Counsel need not tell the purpose at all if he doesn't want to. Ask the witness questions.

Mr. Hunter: The witness has given the purposes of it.

By Mr. Vesey:

Q. What is the purpose of it?

A. I stated on direct that the purpose of these three particular sheets was to show that there are industries at Rockford and Freeport manufacturing the same commodities or articles as industries in the comparative points. I didn't say that that proved a burden on interstate commerce.

Q. Oh, I see. In other words, the basis for that assumption of yours is that the industry in the compared territory happens to be in the list named in the same line of manufacture as a certain industry in the compared territory, is that right?

A. That is right, and such concerns use coal from Illinois and Indiana.

Q. And you presume, therefore, that there is competition as between those industries?

By Exam. Trezise:

Q. Do you?

A. Yes, sure, I do.

Exam. Trezise: All right.

[fol. 1006] By Mr. Vesey:

Q. Now, how did you determine that any of these concerns shown on page 21 are using Illinois coal? How did you make that determination?

A. Well, I see the daily movement of coal from records that come to our office, and that was supplemented by reports from our agents who made an investigation.

Q. Isn't it a probability, Mr. Kuhls, that each of the concerns using Illinois coal on page 21 during the period January-February, 1941, may have been using that coal for the single reason they couldn't obtain coal from their usual source of supply which, so far as you know, may have been Indiana, Iowa or West Kentucky?

A. No, some of these firms I know from my own knowledge have been using certain Illinois coal for the last ten years and Indiana coal for a long period.

Q. Which ones have been using Illinois coal for ten years shown on page 21?

A. My recollection is the Arcade Manufacturing Company at Freeport have been using Illinois coal for a number of years.

Q. That is for ten years, now. All right.

A. For a number of years.

Q. How is that?

A. For a number of years.

Q. Which do you mean, ten years or a number of years? You said a moment ago some of them had been using it for [fol. 1007] ten years. Which is it?

A. I didn't say each one was using it for ten years.

Q. Do you know of any that has been using it for ten years?

A. I am trying to answer your other question now.

Q. I want to find out first so we are on the same grounds. Do you know of any company here that has been using Illinois coal for ten years?

A. Barber Coleman at Rockford has; J. I. Case Company, at Rockford.

Mr. Bather: May I inject a question here, Mr. Vesey.

By Mr. Bather:

Q. How do you know Barber Colman and J. I. Case have been using Illinois coal for ten years?

A. Well, I would have to tell you about all the reports we get in our office.

Q. What I am getting at, Mr. Kuhls, what is the source of your information?

A. The source?

Q. Yes.

A. Reports that we receive.

Q. Barber Colman is not located on the Milwaukee tracks in Rockford, is it?

A. I know, but our Indiana operator has been trying to get business for a good many years and I knew it was coming from Illinois.

Q. Don't you know that during the past three years [fol. 1008] Barber Colman had the bulk of their coal move from Enosville, Indiana?

A. No, I don't.

Mr. Bather: That is all.

The Witness: Sheet 21 shows they get it from Illinois.

Mr. Vesey: I don't care about the sheet. I want to know what you know.

By Mr. Vesey:

Q. Since the interruption, let's go right back to that particular one. Do you know Barber Colman is using Illinois coal today?

Mr. Hunter: I submit that if his report shows it, that he may answer that he knows.

Mr. Vesey: I don't care. He may answer any way he wants to. I am inquiring what he knows.

The Witness: From the information available to me I know it, yes.

By Mr. Vesey:

Q. And you feel positive of that?

A. I am quite sure.

Q. At least you feel as positive of that as any of your other answers, don't you?

A. I wouldn't answer yes if I wasn't quite positive.

Q. What is that?

A. I say I wouldn't answer yes unless I was quite positive.

Q. Whereabouts in Illinois does it come from?

A. Well, now, you have got two questions hanging in the air. Do you want them answered or—the first question [fol. 1009] I haven't answered yet, for the companies that have——

Q. You have answered two of those and I broke in. I am confining you, then, to Barber Colman, which you said you were quite positive was using Illinois coal. I am now asking you whereabouts in Indiana did it come from?

A. Well, that is one firm. I was going to give you some more but if you are satisfied——

Q. We will get to those in just a moment.

A. You want to know now where the Barber Colman coal comes from?

Q. That is right.

Exam. Trezise: Excuse me a moment, gentlemen.

(Short intermission.)

Exam. Trezise: Proceed.

By Mr. Vesey:

Q. I believe the last question, Mr. Kuhls, was as to Barber Colman, and that is where in Illinois do they purchase their coal?

A. That is my information they purchase it in the Harrisburg district.

Q. Don't you know, as a matter of fact, that since the reduction of the 17 cents we have been talking about in the Indiana rate on your Milwaukee mines that that coal is no longer supplied by Illinois but is supplied by Indiana?

A. I have seen some shipments from Indiana but I didn't understand that Indiana supplied their full requirements— [fol. 1010] or supplied it regularly.

Q. In your anxiety of preserving markets for mines, didn't you find it interesting to inquire, when you had shifts of tonnage from Illinois to Indiana, to inquire the cause of the shift or to find out if such shift had taken place, as is the case with Barber Colman that you have just referred to?

A. We haven't had a shift of tonnage from Indiana. The proportion the last few years seems to be less than it was at the time or prior to the time we reduced the rates.

Q. You mean your shift to Indiana has been less? It has been decreasing lately, is that what you mean?

A. Yes.

Q. In other words, your theory of rate-making is accomplished once the shift is brought about, is that right?

A. If I understand your question, the answer would be no.

Q. What is that?

A. If I understand your question, the answer would be no.

Q. Well, you mean you want something more than just the shift to Indiana? What is the other thing you want, then?

A. I thought you said the shift to Indiana occurred after the reduction was made.

Q. That is the fact, isn't it.

A. No, I said in answer to your previous question that in late years our proportion of the tonnage consumed at Rockford has decreased from Indiana.

[fol. 1011] Q. Well, yes. I mean after you get the business, the proportion of shift decreases; I understand that. Now, my point is, I say your theory of rate-making, as you have enunciated here, is satisfied once you bring about the shift, is that right?

Mr. Kaier: Now, has it been established that there has been any shift?

Mr. Vesey: Well, we just got through with Barber Colman.

Mr. Kaier: I hear you talking about the shift but I didn't hear the witness admitting there is one.

Mr. Vesey: Is there any question about it?

Mr. Kaier: There seems to be.

Exam. Trezise: Let the witness answer. Do you know what question is pending before you, Mr. Kuhls?

The Witness: I thought I answered it before.

By Mr. Vesey:

Q. In other words, your theory of rate-making, as you have enunciated it, is satisfied once you bring about the shift to Indiana, is that right? I mean just so we have the answer in the record.

A. Is satisfied once we bring about the shift?

Q. Yes.

A. And if the shift is in the opposite direction, we are not interested?

Q. No, I am just talking about your theory of rate-making here. What you said was, you want to see your mines get the markets. I said that theory of rate-making is satisfied,

[fol. 1012] as far as you are concerned, once you bring about the shift?

A. There hasn't been any shift, as I tried to explain.

Q. What do you mean, there hasn't been any shift?

A. At the time, prior to the time we reduced the rates, the percentage of coal we handled to Rockford was greater than it is today.

Q. You mean the percentage of Indiana coal that your railroad handled?

A. As compared with the total Indiana, yes.

Q. Yes, we understand that. But I am not interested in your road's competition in Indiana; I am just interested in the shifting of the source of supply from Illinois to Indiana. I say your theory of rate-making is satisfied once, by virtue of whatever you do to your rates in Indiana coal, you bring about the shift from the source of supply to this industry in this territory from Illinois to Indiana?

A. We didn't reduce the rates to bring about the shift. We reduced the rates to hold the markets we then had, and since then the shift has been to Illinois rather than to Indiana; because we are handling a smaller proportion of Indiana coal today than we did prior to the time we reduced our rates.

Q. Yes, I understand that. I think the record is clear on that. In the interests of time, I will move over that.

Now, going to the first question here, what other industries here, over a period of ten years, have been using [fol. 1013] Illinois coal? You named Barber Colman which now has gone from Illinois to Indiana, and J. I. Case. Now, what are the others?

A. J. I. Case, at the time this information was prepared, was buying coal from Zigler, which is in the Southern Illinois District; and the Rockford Machine Tool Company has been purchasing from Harrisburg for a number of years.

Q. Now, all of those companies that you have named are the users of Southern Illinois coals?

A. That is right.

Q. Now, in making up this list and in taking the companies that you have named, I will ask you, first, with what company do they compete in the compared territory as shown on pages 22 and 23?

A. Barber Colman and Case?

Q. Barber Colman, J. I. Case, Rockford Machine Tool; those are the three companies you named.

A. Well, there are several producing machines and farm implements.

Q. Do you know of any company on page 21 that has, one, reduced its prices on its manufactured product; two, lost an order, say, by virtue of a disparity of rates on coal interstate versus intrastate?

A. No. The records of those companies aren't available to me.

Q. What is the nature of the competition between the companies shown on page 21 and the companies shown on pages 22 and 23 which you thought sufficiently significant [fol. 1014] to warrant your calling it to the attention of the Interstate Commerce Commission in this proceeding?

A. I read off the list when I introduced this exhibit: Do you want me to repeat it?

Q. I asked you, what was the nature of the competition that you thought was so significant you wanted to call it to the attention of the Commission in this proceeding?

A. Why, these firms manufacture the same or similar products and are in competition with each other.

Q. In other words, just following that for just a moment, and to use an illustration, let's take the first company, Arcade Manufacturing Company, Freeport, Illinois, using Illinois coal, shown by your report. You don't mean to say by that, do you, Mr. Kuhls, that there is competition between that Arcade Manufacturing Company and some other manufacturing company some place in the compared territory which is of such a nature that that competition is germane to the determination of the issues in this proceeding, do you?

A. I have been in a good many cases where it appeared to be.

Q. Oh, I don't care what happened in the appearances. I am talking about the fact here.

A. I assume if it was important in other cases that it was important here.

Q. That was the basis on which you set these up?

A. That is right.

[fol. 1015] Q. In other words, you might as well have gone to the telephone directory and looked down a list of names and said, gentlemen, that is significant because what ap-

pears to be a hardware company in the compared territory is a hardware company in the suspended territory?

Mr. Kaier: I object to the question. It doesn't seek to elicit any fact; it is pure argument.

Mr. Hunter: I join in that objection.

Exam. Trezise: Well, in summarizing, Mr. Vesey, Mr. Kuhls' testimony, he stated, as the Examiner understands it, that these companies that were named and were checked off the other day produced the same kind of commodities. Now, you have had him say that they compete. I didn't know whether he was induced to say that in consequence of your remark or not. And that is as far as he goes. I doubt whether he knows how intense that competition is.

Mr. Vesey: Maybe he doesn't.

Exam. Trezise: I don't believe he knows that. Now, can't we go ahead on that ground?

Mr. Vesey: If he will just say that, I will be happy.

Mr. Stadell: Well, does he know whether there is any competition at all?

By Exam. Trezise:

Q. To what extent, then, Mr. Kuhls, do these companies that are named on page 21 and so on in your exhibit there compete? Do you know the intensity of that com- [fols. 1016-1017] petition? Are you competent to give testimony on that subject?

A. No, I am not.

Mr. Vesey: Thank you.

By Exam. Trezise:

Q. Do you limit your testimony to the fact that you have indicated here that these companies produce the same general commodities? At least they have the same names. That is about the extent of it, is it? Don't let me carry you too far on that.

A. Well, there would be a distinction, probably, for instance in batteries, one company makes a battery exclusively of a certain type that wouldn't compete with another battery company.

Q. Your exhibit is intended to merely show that they produce the same kind of commodities and that it isn't to show that they compete?

A. No, nor to show one has lost business to another because of these rates.

Exam. Trezise: Does that help you?

Mr. Vesey: Very much. Now, just two questions and I think I will be through.

[fol. 1018] AFTERNOON SESSION

The hearing was resumed pursuant to recess.

2:00 o'clock P. M.

Exam. Trezise: All right, gentlemen, we will proceed.

Mr. Bather: Mr. Examiner, I would like to ask Mr. Kuhls several questions.

W. H. KUHLS resumed:

Cross-examination (Continued).

By Mr. Bather:

Q. I believe you testified that the tonnage to certain destinations has an important part in fixing your rates.

A. Yes, the volume of tonnage would have a bearing on the measure of the rates. For instance, the rates to Chicago are influenced by the thirty million odd tons of coal that goes into Chicago.

Q. All of that coal, thirty million tons, does not originate in Illinois, Indiana or Western Kentucky, does it?

A. No.

Q. Some of that coal comes into the Chicago docks?

A. It comes in by boat. Very little comes into the docks, commercial docks.

Q. I mean dock coal comes in by boat to the dock and is reshipped from Chicago?

A. Very little of it is.

[fol. 1019] Q. What is the movement from the docks to Rockford, do you know?

A. Up until this year I think it was around 100,000 or more.

Q. And who handles that coal?

A. The railroad handles——

Q. What railroad handles it?

A. The Milwaukee railroad.

Q. Now, in the movement of coal from the origin points on the Milwaukee road to Rockford as compared with Chicago, what is your terminal switching absorption at Chicago as compared with Rockford?

A. About seven times greater at Chicago than it is at Rockford.

Q. Can you say how much per ton you absorb for deliveries on your connecting lines in the Chicago district?

A. Oh, it varies. The maximum is 31.2 cents a ton.

Q. And what is your maximum at Rockford?

A. I think it is around $3.00; approximately $3.00.

Q. $3.00 a ton?

A. No, a car.

Q. And that would be about five cents per ton?

A. Six cents.

Q. Now, in the movement of coal to the Central Illinois Electric & Gas Company at Rockford over your line, what railroad serves the Central Illinois Electric & Gas Company?

A. Two railroads. One serves the Electric plant, as I [fol. 1020] understand it, and the other serves the gas plant.

Q. Now, the electric plant, what line serves the electric plant?

A. I think the Illinois Central.

Q. No.

A. Milwaukee? Just the reverse.

Q. No, the C. B. & Q. I will give it to you. It is the C. B. & Q., Mr. Kuhls.

Now, in a movement of coal from West Clinton, Indiana, your line receives all of the linehaul, doesn't it, into Rockford?

A. That is right.

Q. And the C. B. & Q. serving the plant switches the cars from your connection to the plant?

A. Yes, sir.

Q. And do you know what the switching charge is that you absorb in making deliveries to the plant?

A. Not offhand.

Q. Well, as you said, it is approximately $2.97.

A. I don't know the exact amount. I said I thought it was around $3.00.

Q. And I believe you also testified that the movement of that coal coming in on your line amounted to approximately 200,000 tons per year.

A. Yes, if the coal is available. It hasn't been available [fol. 1021] of late; it hasn't moved in that volume.

Q. But taking the 1942 figures, there was a substantial movement of coal over the Milwaukee railroad?

A. Very substantial, yes.

Q. You also have joint rates from Southern and Central Illinois points to Rockford in connection with the Illinois Central through Mendota, do you not?

A. We do.

Q. Is there a substantial movement of coal via that route?

A. There is, yes, sir.

Q. Going back to Mr. Vesey's examination with regard to page 21 of your Exhibit 12, do you know the tonnages of coal going to industries such as the Anderson Metal Products Company, the Colonial Desk Company, Nelson J. Bilstrom, Rockford Varnish Company, Testor Chemical Company, A. C. Woods Company?

A. I don't have the tonnage. My impression is that it is not very substantial.

Q. It is not very substantial? It doesn't amount to a large tonnage?

A. On a year-around basis, all those firms use a considerable quantity of coal but nothing compared to the utilities.

Q. Well, as compared with the other industries such as Barber Colman, J. I. Case, Free Sewing Machine Company, Greenlee Brothers?

A. It would be less than those companies.

[fol. 1022] Q. Very much less, wouldn't it?

A. Yes.

Q. Why didn't you include in this statement the Ingersoll Milling Machine Company?

A. I don't know why it was omitted unless they obtain their coal from dealers.

Q. Do you know that they switched from coal to oil?

A. Well, that is the reason it isn't in here, then.

Q. Do you know that or not?

A. No, I didn't know that.

Q. In showing these industries at Rockford, I do not believe it is your contention that the machines made by Barber

Colman Company, for example, compete with machines made at Freeport, Beloit, Jamesville and other points, Madison and other points shown in the exhibit.

A. I don't know whether the machinery manufactured at other cities, whether they manufacture conveying machinery or not.

Q. In other words, what kind of machinery does Barber Colman produce?

A. I understand they produce conveying machinery.

Q. What is that?

A. Conveyors.

Q. Well, that is wrong but—they produce textile machinery, not conveyors, but that is beside the question. My point is this; that your exhibit does not intend to convey the [fol. 1023] impression that just because a company manufactures machinery, that the particular kind of machinery manufactured by them comes in competition with machinery manufactured in Rockford or other points shown in your exhibit?

A. No, there is quite a number manufacturers in here and as to just how they compete, I wouldn't be able to say.

Q. In other words, textile machinery wouldn't compete with metal working machinery?

A. No.

Mr. Bather: I think that is all.

Exam. Trezise: Do we have further questions?

Mr. Cardy: I have two or three questions.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Kuhls, will you turn to Exhibit 4, Section V, page 30. That shows the present rates from the Brazil-Clinton and Sullivan-Linton District, the first two columns. The present rate from your mine is $1.80, from mines on your line, and from the other six points of origin located on other lines it is $1.97.

A. That is correct.

Q. As I understand your testimony, this $1.80 which is proposed to be increased 15 cents, thus making it $1.95, will be the going rate and the only kind of a rate that can handle traffic to Rockford, is that right?

[fol. 1024] Mr. Stadell: Now, just a minute, there are four questions in that.

The Witness: No, Mr. Cardy, there is movement from mines on other railroads taking the higher rate.

By Mr. Cardy:

Q. Well, is that relatively small as compared with the movement via the $1.80 rate?

A. Yes, it is relatively small.

Q. As I understood you to say, you handle 90 per cent of the traffic over this particular rate?

A. We handle 95.4 from the Brazil-Clinton District and 78.5 from the Linton-Sullivan District.

Q. What was that 78?

A. 78.5.

By Mr. Stadell:

Q. Is that just to Rockford?

A. Just to Rockford.

By Mr. Cardy:

Q. Now, what have you to say with reference to this $1.95 rate which you are attempting to testify in this proceeding with reference to whether or not you could stand a higher rate and if you had a higher rate, whether or not it would move any traffic?

A. Oh, I think there would be some movement, but it would be very small.

Q. In other words, the proper and just rate, the necessary rate, the rate that is required for the traffic will be the $1.95 if this adjustment goes in, is that not true?

[fol. 1025] A. Yes, we need a competitive rate.

Q. Now what have you to say with reference to any movement moving on the $2.00 rate which is contemplated to apply from mines on other lines in the Brazil-Clinton District to Rockford?

A. I think that there would be some movement.

Q. It would be very slight, would it not?

A. Not in greater proportion to the present movement.

Q. Now, which rate do you think is what might be termed the just and reasonable rate as between the proposed $1.95 and the $2.12 rate in this same group? Which rate are we to take and use as a measure for testing the reasonableness of other rates involved in this proceeding?

A. Why, I think we would have to take the $1.95 rate because that is the rate from the Springfield district.

Q. Then the natural conclusion would be that there is really no justification for increasing this rate of $1.97 from all of the other mines in the Brazil-Clinton district, isn't that true?

Mr. Bather: $1.97?

The Witness: Well, the justification is that the increase is necessary to comply with the Fairbanks-Morse decision.

By Mr. Cardy:

Q. But if you did comply with the Fairbanks-Morse case, there would be no, practically no movement of coal on that rate, isn't that true?

A. There wouldn't be a heavy movement. There would be some.

[fol. 1026] Q. Now, substantially the same situation would apply with reference to your rate of $1.95 on the Sullivan-Linton District and the rate of $2.02 from the mines located on other railroads, isn't that true? In other words, if I asked you the same questions——

A. I think so, yes.

Q. You would make the same answers?

A. Yes.

Q. Now, Mr. Kuhls, in approaching this rather difficult situation, did it occur to you that in publishing two different rates and asking the Commission to put in two different rates from the Brazil-Clinton and the Sullivan-Linton districts that you will have exactly the same situation that you had in Southern Illinois as a result of the General Motors case in the rates to Jamesville, wherein the Commission held that situation unlawful?

A. I don't know. I think there is a little difference there. There was a substantial movement from Southern Illinois on the higher basis of rates.

Q. Well, haven't we the basic facts, namely, that in the General Motors case they picked out five points of origin and reduced the rates from those five points without reducing the rates from other mines in the same district?

A. That was done, but there was a substantial volume of tonnage continued to move from the higher-rated mines.

[fol. 1027] Q. Now, in constructing rates from the Princeton, Boonville and Ayrshire district, you use the $1.97 rate

today, do you not, applying the going differentials, and not the $1.80 rate?

A. Well, the Princeton-Boonville rates are related to the rates published from the Linton-Sullivan group by the railroads that serve both groups.

Q. Well, you take the rate to Rockford from the Princeton district. It is five cents over the Sullivan-Linton.

Mr. Zoll: Seven cents.

By Mr. Cardy:

Q. Seven cents over the Sullivan-Linton rate, is it not? That is the going basis.

A. Yes, seven cents over the rate published by the——

Q. Now, you use the $2.02 rate from Sullivan-Linton and add seven cents to that rate and get a rate of $2.09, is that not true?

Mr. Hunter: To what point?

By Mr. Cardy:

Q. For instance, from Princeton to Rockford.

A. That is the difference in the rate, yes.

Q. Why don't you just apply seven cents over the $1.90 cent rate that the Milwaukee has there in the Sullivan-Linton district?

A. We don't publish the rates from the Princeton groups. We couldn't do anything with those rates.

Q. Nevertheless, by the publication of rates in the manner you have indicated, it increases the differential and it dis- [fol. 1028] turbs the differential that was in effect prior to the reduction by the Milwaukee from its rate in these two districts, isn't that true?

A. The differences were disturbed, yes.

Q. Can you tell me the real reason, if there is any, why you didn't follow your usual practice of constructing rates on coal in this territory and preserve the group adjustment regardless of the measure of the rate now?

A. We don't publish rates from Princeton. We couldn't make any change in those rates.

Q. Now, Mr. Kuhls, just what is the extent of this $1.80 rate? Are there any absorptions at point of origin, or do these rates all apply from mines local to the Milwaukee?

A. Coal could move from a mine in the Terre Haute switching district on these rates.

Q. And what would be the switching absorption and what is the road?

A. The mine is served by the C. & E. I. and the switching charge, I believe, is $2.97 a car.

Q. And the Milwaukee absorbs that out of the $1.80?

A. Yes, sir, if any shipments were routed that way.

Q. But the rate is in, nevertheless. Now, in making deliveries at Rockford, how many connnecting line deliveries have you where you make deliveries off of the Milwaukee railroad?

A. At Rockford?

[fol. 1029] Q. Yes.

A. Three.

Q. And what roads are those industries located on?

A. Illinois Central, C. B. & Q. and the C. & N. W.

Q. That is practically all of the industries, I mean all of the industries in Rockford are located on those four lines, the Milwaukee, I. C.——

Mr. Hunter: I object.

By Mr. Cardy:

Q. Is that not a fact?

Mr. Hunter: That is so obvious. If there are only four railroads in Rockford, they must all be located on those four railroads.

By Mr. Cardy:

Q. Well, is that the fact?

A. That is a fact. They are not equally divided, of course.

Q. In other words, this linehaul rate of $1.80 applies for deliveries at all industries, regardless of whether they are located on the Milwaukee or other lines, is that true?

A. That is right.

Q. And the Milwaukee absorbs that switching charge?

A. Yes, sir.

Mr. Cardy: I think that is all.

Exam. Trezise: Do we have some further questions?

Mr. Bather: Mr. Examiner, I overlooked one question I would like to ask Mr. Kuhls.

Exam. Trezise: All right, Mr. Bather.

[fol. 1030] By Mr. Bather:

Q. Referring again to page 21 of your exihibt 12, you show J. I. Case Company engaged in the manufacture of farm machinery. Do you know what they are engaged in now?

A. Probably production of war products.

Q. Do you know what kind of war products?

A. No, we don't go into that very deeply.

Mr. Bather: Well, if permissible, I would like to say they are manufacturing airplane wings.

By Mr. Bather:

Q. Now, do you think that this exhibit of yours really shows the commodities that are manufactured by the industries named in the exhibit? It is pretty hard for me to reconcile the purpose of the thing because many of the industries shown are not manufacturing the articles shown under the heading of "commodity".

A. Oh, this covers normal times.

Q. Normal times?

A. Yes.

Q. But you have no assurance J. I. Case will get back in the farm machinery production or they might change to something else?

A. I assume they will as soon as the Government withdraws their orders for airplane wings.

Mr. Bather: I think that is all.

Exam. Trezise; All right, Mr. Wood.

Mr. Wood: Please.

[fol. 1031] By Mr. Wood:

Q. Mr. Kuhls, I would like to call your attention to page 13 of your Exhibit 12. I recall you answered to a question yesterday, I believe by Mr. Bather, that this statement of articles taking Class D and Class E rates as listed here was presented by you as a cross section. Do you recall that testimony?

A. Yes, sir.

Q. Who selected these articles on this page to make up the cross section picture?

A. Why, this list was selected some time ago and was in my files.

Q. Now, I say who selected the items to go on this list?

A. Railroad defendants in a number of cases.

Q. That was a committee on which you sat? Did you take part in the selection of these items as a cross section picture?

A. Not for this case. This was selected quite some time ago for other cases.

Q. I am not talking about the time. I want to know who did it and if you had any part in making that selection.

A. Yes, sur-ly.

Q. Now, I notice there are 31 lines numbered up and down in two columns, but some items take more than one rate and some of these items are varied, for instance, different types of ashes, and I have counted them. I note about 32 different commodities listed on that page; that is approxi- [fol. 1032] mately. You can correct me if you think I am wrong. But I would like to ask you if you know how many commodities are listed in Class D and Class E ratings in Western Classification territory prescribed by the Interstate Commerce Commission, total?

A. You mean the commodities normally taking the class rate that have been taken out of the classification and specific rates prescribed?

Q. There are some, between 31 and 62 commodities listed here out of Cla s D and Class E ratings, right?

A. Yes.

Q. Now, how many are there in the aggregate, what is the total number of all commodities in Class D and Class E ratings in the classification?

A. Taking percentage of first class or regular class rate?

Q. I mean the whole list, all of them.

A. I wouldn't know.

Q. Well, we know that there are between 31 and 62 listed here?

A. Yes.

Q. On one page. Now, are there a thousand more, are there a hundred more or are there 10,000 more commodities taking Class D and Class E ratings in Western Classification territory prescribed by the Interstate Commerce Commission?

A. For this rating it wouldn't make any difference whether there was ten or 10,000.

Q. That isn't an answer to my question.

[fol. 1033] A. I told you I wouldn't know.

Q. You have——

Mr. Hunter: Well, I will come to the defense of the witness and object. I don't see the materiality of that line of questioning, Mr. Examiner, and I object to it.

Mr. Wood: I intend to show it, if you will just be patient.

Mr. Hunter: O. K.

Mr. Wood: He has submitted this as a cross section and I want to know if it is a cross section of a million commodities or a hundred.

Mr. Zoll: He said he didn't know, so you would have to proceed to another question.

By Mr. Wood:

Q. Do you have any idea?

A. Well, you are talking about something different than is shown on sheet 13.

Q. If you listed all of the commodities in Class D and Class E, would it take two pages like this?

A. On which the Commission prescribed percentage of first class?

Q. Yes. Could you get all the rest of them on one more page this size?

A. No.

Q. On two pages this size?

A. I doubt it.

Q. One hundred pages this size?

[fol. 1034] A. Yes, I would say so.

Q. Then having answered that as an expert, in making this survey, in making up this cross section, you now present this as a fair and proper cross section of Class D and Class E ratings in Western Classification territory?

A. If I recall what I said, it was a cross section of light and heavy loaded commodities and a cross section of value of the commodities from low to high as compared to coal. Some of these commodities are much cheaper than coal, others are higher.

Q. Do you recall when this list was previously made up for some other case, whether that was a coal case?

A. Yes, it was made up for a coal case.

Q. And you took part in the selection of these commodities, less than 50 on a page, having been presented as a cross section, by multiplication, 500 pages of the same size,

in consideration of that, you, as an expert in making up cross section surveys, deemed this a proper picture for comparative purposes?

Mr. Kaier: I object to the question, Mr. Examiner. The witness has already made it clear how he used the term "cross section," and he has disavowed using it as a cross section of classification ratings D and E, which is the point still being pursued by the question.

Exam. Trezise: Oh, I think he may answer the question, if you have an answer for it.

The Witness: Well, I still think I have described it [fol. 1035] properly as to the percentage ratings on commodities taking Class D and E that are comparable with coal.

By Mr. Wood:

Q. And is counsel correct in saying you have disavowed with respect to this page?

Mr. Kaier: Disavowed what?

Mr. Wood: I don't know what; that was your statement. You said with respect to this page.

Exam. Trezise: Did you disavow anything, Mr. Kuhls?

A. No, I didn't.

Exam. Trezise: All right, he says no.

By Mr. Wood:

Q. Now, if you will turn to pages 21, 22, and 23 of the same exhibit——

Mr. Vesey: If the Examiner please, could we go off the record for one moment?

Exam. Trezise: How many more questions are you going to have, a number?

Mr. Wood: No, this is just one phase. It is the second phase and I am through. I am more than half through.

Mr. Vesey: Off the record.

Exam. Trezise: All right, off the record.

(Discussion outside the record.)

Exam. Trezise: Take a recess.

(Recess taken.)

Exam. Trezise: All right, proceed.

By Mr. Wood:

Q. Mr. Kuhls, you say you got page 13 out of your files. [fol. 1036] Do you recall how long that page had been in your files?

A. Oh, a year or two before the hearing in this previous case, I. & S. 4368, four or five years.

Q. And it was not made up then under your supervision and direction?

A. Oh, yes, I modified the original one by making additions and eliminations.

Q. Oh, you selected, added some commodties and tossed some out?

A. Yes.

Q. Which ones did you eliminate, do you recall that?

A. I don't recall.

Q. How many?

A. I don't recall that either.

Q. How many did you add?

A. I don't remember.

Q. Now, we will pass to your pages 21, 22 and 23 for a moment. I recall yesterday, in answer to Mr. Bather's question about utilities not being listed in there, you said you eliminated them because they were not competing. Do you recall that testimony?

A. Not competing in the sense that manufacturing industries do.

[fol. 1037] A. Yes.

Q. What did you mean, they are not competing? They don't compete with each other or they don't compete with the people that are listed on these three pages?

A. They don't compete with each other to the extent that manufacturing industries do.

Q. Then are we to assume that, in your opinion, all of these companies listed on these three pages are in competition with each other?

A. No, sir.

Q. Well, just how do you apply that word "competing," then? The utilities were not listed because they don't compete.

A. Utilities don't compete because they have a fixed territory to serve. The electric utility at Dubuque can't sell electric power at Des Moines one day and Springfield, Illinois, another day.

Q. I see.

A. They have a fixed market; whereas manufacturing industries do not.

Q. And their rates are fixed and therefore they——

A. They are regulated. They have to get approval of state commissions to build lines and things like that.

Q. You mean they do not compete with each other nor do they compete with these firms?

A. That is right.

[fol. 1038] Q. Do you know how many of these firms have power plants of their own, on pages 21, 22 and 23?

A. This doesn't show the competition of power. It shows the competition of the manufactured product.

Q. That is not an answer to my question. I am asking you, do you know how many of these industries have their own power plants?

A. I wasn't interested so I didn't check into it.

Q. You do not know?

A. No, sir.

Q. But those who do have their own power plants are, in a sense, competing with utilities in the sense they produce their own power and do not purchase the utilities?

A. I don't think so.

Q. Is there one on this list that has its own power plant?

A. Several.

Q. And are pages 21, 22 and 23 offered here because they are competing industries?

A. To the extent they manufacture the same product.

Q. The same product as who, each other?

A. Yes.

Q. Well, who competes with Anderson Metal Products Company at Rockford on Brass fixtures?

A. Well, I think that that industry competes with—I withdraw that. I didn't mention that as a competing article.

[fol. 1039] Q. But then are all the other firms on these three pages offered as competing with each other?

A. No, Mr. Wood. I very carefully read a list of commodities that I thought were produced by competing companies.

Q. Now, turning back to page 13 and noting the commodities listed on page 13 and keeping in mind your pages 21, 22 and 23 of your Exhibit and the commodities manufactured

by the firms listed there, do you mean to imply that there is any reference or connection or semblance between the commodities on the four pages—three pages—as compared with page 13?

A. Certainly not.

Q. Not at all?

A. No, sir.

Mr. Wood: That is all.

Exam. Trezise: Do we have some further questions?

Mr. Stadell: I have just one question I would like to ask.

Exam. Trezise: Mr. Stadell:

By Mr. Stadell:

Q. I understood you to state, in answer to a question by Mr. Bather, that the electric plant at Rockford had been securing approximately 200,000 tons of coal annually from the Indiana mines, and you later stated that that was true when the coal was available. What do you mean by "when the coal was available"?

A. Well, it isn't always available because of local condi-[fol. 1040] tions at the mine producing the coal that is being shipped; machinery breakdowns, strikes and so on.

Q. You mean aside from those conditions, when the mine is closed down on account of a strike or a breakdown, that that coal does move from the Indiana mines?

A. Not all of it, I don't believe. I don't believe Indiana can furnish all of the requirements.

Q. You say they can't furnish all the requirements?

A. At times they can't furnish any.

Q. Do you mean that they have so many other movements that they can't supply the required tonnage to that firm?

A. Lately, yes, the same as all other mines; all other mines in the same position.

Q. But some of those mines did step in and furnish that tonnage to the electric plant, didn't they?

A. Yes, sir.

Q. And those were Illinois mines, weren't they?

A. Yes, sir.

Mr. Stadell: That is all.

Exam. Trezise: Do we have any further questions of Mr. Kuhls?

Mr. Hunter: I would like to ask a few on redirect if the cross examination has been completed.

Exam. Trezise: All right, Mr. Hunter.

Redirect examination.

[fol. 1041] By Mr. Hunter:

Q. Mr. Kuhls, in answer to a question on cross-examination yesterday, I think you stated inadvertently that the carriers proposed to make the Beloit rate 15 cents over the existing rate to Rockford. That was an error, was it not?

A. Yes, it was.

Q. Will you correct it, please.

A. Well, the purpose of this publication under suspension is to increase the rates to Rockford so that they will be not more than 15 cents under Beloit, in order to comply with the decision in the Beloit case.

Q. Mr. Kuhls, I direct your further attention to pages 21, 22 and 23 of Exhibit 12, concerning which a number of questions were asked on cross-examination, and reference was made particularly to the fact that you omitted certain industries, for example, the cement plants at Linwood, Iowa, and at Dixon, Illinois. Have you any explanation for such omission?

A. Well, they weren't exactly omitted. They were not included because these pages do not purport to show all the industries in the affected suspended territory, nor all the industries in the comparative territory. In order to make the least work, I picked out those destinations in the suspended territory for which to make the study. Now, if we had chosen Dixon as one of the points, we would have shown the cement plant at Dixon and naturally we would have shown the cement plant at Linwood in order to give the record a competing industry in the compared destination [fol. 1042] territory. So if I had taken the entire affected territory, there would have been a good many more pages to this showing than there are now.

By Exam. Trezise:

Q. And these industries that you mention here and that you have included and those that you haven't included, you mean by that the industries that do consume coal?

A. That is correct.

Exam. Trezise: Thank you.

By Mr. Hunter:

Q. Mr. Kuhls, I direct your further attention to the considerable discussion that took place during cross-examination with respect to the factors or elements that have to be taken into consideration by the Commission in prescribing differentials between the various groups, particularly between the Fulton County Group and the Southern Illinois Group. Have you any further comment or explanation to make as to what factors you feel the Commission should consider when that matter is ruled upon?

A. Well, practically all of the evidence and questions concerning differentials so far has been directed to the differential between Fulton County and Southern Illinois, two groups out of a total of fifteen. In my opinion the Commission should give consideration to the effect the change in the differential between Fulton County and Southern Illinois would have on the relationship between those two groups on the one hand and the other groups in Illinois, Indiana and Western Kentucky. The Commission did pre- [fol. 1043] scribe a differential of 70 cents Southern Illinois over Fulton County to a large section of Iowa.

By Exam. Trezise:

Q. Eastern and Northern Iowa?

A. Yes. To that territory it might be said that traffic from all the groups in Illinois, Indiana and Western Kentucky, except Fulton County, of course, moves through Fulton County or adjacent territory, and a fixed differential Southern Illinois over Fulton County of 70 cents might be proper under those circumstances; but when you consider Northern Illinois and Southern Wisconsin, it will be found that Fulton County coal moves eastward, whereas the Indiana coal moves westward, and the relationship, that is the mileage relationship between Fulton County and the Indiana groups is entirely different to Northern Illinois and southern Wisconsin than it is to this Iowa territory where the Commission prescribed the 70 cent differential, and accordingly the 70 cent differential fixed in Iowa might be somewhat different than that to Northern Illinois and Southern Wisconsin.

Q. And of course each time you mention the 70 cent differential, you mean Southern Illinois over Fulton-Peoria or Fulton County?

A. Yes. In this proceedings it is referred to as Fulton County under Southern Illinois and in Iowa it was Southern Illinois over Fulton-Peoria.

Mr. Hunter: That is all we have.

Mr. Christiansen: I have a question or two along those [fol. 1044] lines.

Mr. Bather: One minute, Mr. Christiansen. On redirect I want to develop one thing about this Beloit situation that Mr. Hunter brought in.

Recross-examination.

By Mr. Bather:

Q. In the original decision in Docket 25419, in which the Commission fixed the rate to Beloit 25 cents over the rate in effect at that time to Rockford, the carriers published that rate, did they not, from Southern Illinois of $2.25 to Beloit with the differential relationship from the other two groups?

A. Yes, sir.

Q. Now, in Ex Parte 115, that order was modified so that the increase in the Rockford rate was 10 cents, making the rate from Southern Illinois $2.10 and the rate to Beloit was increased 15 cents, making the rate to Beloit $2.40, is that correct?

A. That is right.

Q. So that instead of the difference being 25 cents, it was increased to 30 cents?

A. That is right.

Q. Now, in this case, where the Commission prescribed a basis to Beloit 15 cents over the contemporaneous rate in effect to Rockford west—I don't say west, particularly—but the carriers took the alternative of increasing the Rockford rate to clear the existing rate to Beloit, instead [fol. 1045] of reducing the rate to Beloit to $2.25, is that correct?

A. That is right.

Q. In other words, in order to conserve or preserve the relatively small reduction in the revenue of the carriers to Beloit, you would add a very material increase in the revenues of the coal-carrying lines to Rockford and related points, is that correct?

Mr. Zoll: I will object——

The Witness: No.

Mr. Bather: Well, you can object if you want to. I want an answer to the question.

Mr. Zoll: I wanted to object to the question on the ground that it carried an assumption that a decrease in the Beloit rate would mean a comparatively small diminution of the carriers' revenues, whereas the carriers' case has shown that the reduction in revenue would be considerable.

You may go ahead. I thought I would argue the case here.

Mr. Bather: Well, I don't want you to. I am not arguing the case. I just want this witness to state whether or not the relatively small reduction in revenue by a reduction in the rate to Beloit is reasonable, when considered in connection with the great increase in the revenue which would result in the increases involved in these proceedings.

The Witness: I started to answer your question no, that wasn't the main consideration. That was one. But we [fol. 1046] were looking beyond. We were fearful that the continuation of this low level in Northern Illinois would ultimately bring down the level of the present rates to the entire State of Wisconsin. It was being projected gradually, Beloit, Fort Atkinson, Lake Mills and Jamesville, and it appeared to us that it would continue to spread.

By Mr. Bather:

Q. Taking into consideration the volume of tonnage from Illinois and West Kentucky to Northern Illinois as compared with the volume of tonnage from Illinois, Indiana and Western Kentucky to points in Wisconsin, do you think that, assuming, as you perhaps have, that the adjustment to Beloit might be reflected to other points in Wisconsin, do you think that that justifies a material increase in the rates to Northern Illinois where the tonnage is more substantial than it is to Wisconsin points?

A. Probably not, if the rates to Southern Illinois were on a reasonable level.

Q. I take it you do not consider the rates to Northern Illinois on a reasonable level?

A. I think they are a good deal below reasonable maximum level.

Q. Well, as compared with the rates to Chicago and other points in the Chicago district, and going out to South Bend, Indiana, do you think that the rates to Northern Illinois are on such a very low level as to justify a 15 cent increase in the rate?

A. I think so.

[fol. 1047] Mr. Bather: That is all.

By Exam. Trezise:

Q. Well, Mr. Kuhls, in connection with the answers that you have made, there is to be no insinuation on the record that the carriers failed to observe the Commission's order in the original Fairbanks-Morse case of 25 cents Beloit over Rockford by the establishment of a 30 cent rate Beloit over Rockford, for the carriers had authority to maintain the existing group relationship, is that true?

A. The carriers understood that the order in Ex Parte 115 authorized them to depart from the provisions of outstanding orders to the extent necessary to make the Ex Parte 115 increases effective. That is the question Mr. Bather asked me.

Q. Yes. You had rather a specific order authorizing you to do that thing, did you not?

A. We did.

Mr. Bather: I agree with that, Mr. Examiner.

Exam. Trezise: Yes. This is off the record.

(Discussion outside the record.)

Exam. Trezise: Any further questions? Oh, yes, Mr. Christiansen.

By Mr. Christiansen:

Q. Mr. Kuhls, is it not true that the origin groups in Illinois south of the Fulton-Peoria District are differentially related to Southern Illinois, this destination territory, by specific differentials?

A. Some but not all. I don't believe the Commission [fol. 1048] treated all the groups in the coal cases of 1920.

Q. Which ones aren't differentially related?

A. Centralia. I don't think Centralia was mentioned; and DuQuoin.

Q. Those are rather small groups as far as Centralia is concerned, isn't it?

A. Yes.

Q. How about the Indiana origin groups? Are the Indiana groups related to Southern Illinois or are they related to some other producing district today?

A. Well, I don't know that there is any special or fixed relationship with any specific group. All the rates are related, either by differentials or differences that have existed a good many years and it can be stated in any number of ways. You can say that Linton-Sullivan is 10 cents over Brazil-Clinton or you can say it is 20 cents under Southern Illinois. The way of stating it doesn't change the relationship.

Q. Do you consider the Brazil-Clinton group is definitely related to Southern Illinois by a 30 cent differential?

A. Yes, sir.

Q. Now, if it becomes necessary in this proceeding to readjust the rates between Fulton-Peoria and Southern Illinois in order to establish a reasonable differential between the two groups in Indiana, and the other groups in Illinois being related to Southern Illinois, by a fixed [fol. 1049] differential, will be automatically taken care of, will they not, if they continue to have a set and fixed differential relationship to Southern Illinois?

A. Yes, to Southern Illinois, but that would throw them out of relation with Fulton County.

Q. Do you now advocate, if that should happen, that the Indiana group be related to Fulton County as the base group instead of being related to Southern Illinois?

A. I am asking the Commission to consider the effect it would have on the relationship between Fulton County on the one hand and the other groups in Indiana on the other hand.

Q. In so far as the movement from Fulton County on the one hand and Indiana groups on the other hand, they both move in a northerly direction out of the mine, do they not? Fulton County practically straight north and Indiana northwest.

A. No, Fulton County northeast and Indiana northwest.

Q. There isn't much northeast to it; pretty near straight north?

A. Quite a bit; Rockford, Jamesville.

Q. Now, when you decided to readjust the rates to comply with the Fairbanks-Morse latest decision, you didn't comply

with that decision in the rates from Atkinson to Rockford, did you, the published proposed rates? Is it not a fact——

A. I think not.

Q. Is it not a fact that under the proposed rates, the differential between Atkinson on the one hand to Rockford [fol. 1050] and Atkinson to Beloit on the other hand would be 29 cents instead of 15 cents?

A. I think that is the difference in the rates, yes.

Q. Do you know of any reason why that should exist?

A. There is no particular reason that I can think of why it should be that way or why it shouldn't be that way.

Q. The Atkinson rate to Beloit is $1.94; the Fulton County rate to Beloit is $1.80. Do you know of any reason why the Atkinson rate should be 14 cents a ton higher than the rate to Beloit?

A. I thought there was quite a difference in the mileage.

Q. If Atkinson is 35 miles less, in round numbers, than Fulton County, why should it be 14 cents a ton higher? Do you know of any reason?

A. Well, that is just one of the differences in rates that you can't always find the answer for.

Q. Do you feel you have complied with the decision in the Fairbanks-Morse when you leave a 29 cent differential between Rockford and Beloit on the Atkinson movement, rates?

A. The 30 cents a ton was——

Q. I am talking about the 15 cents a ton; the present proposed rates.

A. Oh, I beg your pardon. I am not familiar with those rates, Mr. Christiansen. In fact, I didn't even know what the measure of the rates was.

[fol. 1051] Q. The rate to Beloit is $1.94 from Atkinson and the proposed rate to Rockford is $1.65, making a difference of 29 cents.

A. I didn't go into those rates.

Q. Do you know of any reason why the Beloit rate should be 29 cents higher than the proposed Rockford rate, in the light of the Fairbanks-Morse decision?

A. No, I think the Atkinson rate to Beloit could be the same difference over Rockford as the other rates.

Mr. Christiansen: Thank you.

By Mr. Bather:

Q. What do you mean by that? To raise the rate to Rockford 15 cents over the existing rate to Beloit?

A. Yes, sir.

Exam. Trezise: Any further questions?

Mr. Christiansen: One more question:

By Mr. Christiansen:

Q. Do you know of any reason why the Atkinson rate to Rockford should be 15 cents higher than the Fulton County rate to Rockford for 35 miles less distance?

A. I spoke in the abstract there. If you have got to have a 15 cent difference between the two cities, that difference can be brought about by increasing the Rockford rate as well as it can be brought about by reducing the Beloit rate.

Q. The more reasonable basis would be to reduce the Atkinson-Beloit rate rather than increase the Atkinson-Rockford rate, when the Atkinson point of origin is the nearest point in the Fulton County group to the destination, would [fol. 1052] it not? In other words, there is no reason why Atkinson should be higher than Fulton County to this territory, being as it is the closest point in the origin group?

A. I haven't gone into those rates, as I said, Mr. Christiansen.

Q. Well, just as a traffic man, would you say there was any reason why it should be?

A. I would rather give that adjustment some study before I answer any questions concerning it.

Q. Well, let's make a little study of it. The mileage from Atkinson to Rockford is 115 miles, according to the carrier's Exhibit No. 4, on page 12 of Section III. The mileage from Fulton County to Rockford is 153 miles. Now, from the standpoint of making freight rates based on mileage alone, first, do you know of any reason why Atkinson should have a rate 15 cents a ton higher than Fulton County to Rockford, such as you suggest might be done by making the Atkinson rate 15 cents under the existing Beloit rate?

A. Atkinson and Fulton County are the same to Rockford.

Q. Yes, but you suggest that they might readjust this Atkinson rate to line up 15 cents under Beloit instead of

reducing Beloit 14 cents; make the Beloit 15 cents over the proposed rate to Rockford. Now, what I want to know is, do you know of any reason why Atkinson should be 15 cents or 14 cents a ton higher than the rate from Fulton County to Rockford, based on those mileages?

[fol. 1053] A. Well, we are getting back to a question whether it should be on a distance scale or——

Q. Even if it isn't on a distance scale, do you know of any reason why the nearest point in the Fulton County group, or if you say it isn't in Fulton County, still that is some 35 miles closer than the Fulton County group, should have a rate 14 cents higher to a given destination, I don't care what the destination is?

A. I don't know why it is higher.

Q. You would say it ought to be equalized, wouldn't you; at least that is the worst it ought to be? It ought to be equalized or made lower, wouldn't you say?

A. It could be.

Q. It ought to be, hadn't it?

A. I don't know, really.

Q. Now, didn't you testify this morning on cross-examination and on your redirect examination that you thought that the Brazil-Clinton group, where the mileage was the same from those origin group points on the Milwaukee railroad, as against the mileages from the rest of the origin points on the other railroads in the Brazil-Clinton Group, that they ought to be approximately the same, or the same?

A. Yes, and I would say this might be the same, too.

Exam. Trezise: For a difference in distance of, what did you say, 38 miles?

[fol. 1054] Mr. Christiansen: About 35, I said. I didn't figure it out exactly. It is around 35 miles. It is 115 against the carriers' figures of 153; 38 miles.

By Exam. Trezise:

Q. Well, Mr. Kuhls, should there be evolved from this record some rule of thumb, if you want to call it that, for determining what the differentials should be to the destination territory here between the Illinois groups, based generally upon distance, in somewhat the same manner as was followed in the Midland case, would you say that the same so-called rule of thumb should also apply from Indiana

with respect to the relationship of the rates from the respective groups in Indiana, and do you have any thoughts on that? If it is too general, why, we will just pass it.

A. We didn't come here with any proposal except the rates as we have published them. Of course, the Commission is free to consider or to approve some rates and disapprove others because of existing relationships which they might feel are wrong. But you can't look at it in the same broad aspect as you did in the Midland case because of the shorter hauls. You can't use the same rule of thumb here that you did in the Midland case. You have got longer hauls to Iowa than you do to Northern Illinois. In other words, you can't have one differential for the entire territory.

Q. Well, frankly, the Examiner does not know the answers to these questions and I thought I would like to have a [fol. 1055] little help from some of you experts. I have never been able to see why the rates from some of these groups for longer distances should be lower than some of the rates from the other groups for shorter distances, and if we could get rid of that idea, maybe the Commission could help out in the matter.

A. Well, it takes some study, Mr. Examiner. I can't answer it offhand.

Exam. Trezise: This is off the record.

(Discussion outside the record.)

Exam. Trezise: If there are no more questions, you might think that over.

Mr. Kaylor: Mr. Kuhls, I just want to ask a few questions.

By Mr. Kaylor:

Q. Your testimony shows that you are an expert rate witness for the Milwaukee railroad, and how long have you been with the Milwaukee in rate matters?

A. Nineteen years.

Q. Nineteen years?

A. Yes, sir.

Q. Was the C. M. & G. taken over by the Milwaukee during that time?

A. Prior to that time.

Q. Prior to that time?

A. Yes, sir.

Q. Do you have a direct line from the Indiana fields to these Northern Illinois destinations?

[fol. 1056] A. Some of them, yes.

Q. In your opinion, does that change in any way the situation with respect to the rates from Southern Illinois to Rockford or Freeport since that time?

A. The fact that we acquired the C. M: & G.?

Q. The direct line from the Indiana mines serving—you serve Rockford?

A. No, that doesn't change the situation with respect to the rates from Rockford.

Q. It doesn't change it any?

A. No.

Q. Even though it is a single-line haul?

A. No, I wouldn't say so. The Commission hasn't paid much attention to single-line versus joint line hauls for a good many years.

Q. Did your company oppose the entry of the order by the Illinois Commerce Commission in the Rockford-Freeport cases?

A. We did.

Q. At that time, you did not serve the Indiana mines directly by a single-line haul, did you?

A. Oh, yes.

Q. You did?

A. Yes, sir.

Q. That order was entered in 1926, I believe.

A. We served the Indiana——

[fol. 1057] Q. Did you then have a single-line haul from the Indiana fields?

A. Since July 1, 1921.

Q. You did?

A. Yes, sir.

Q. Then since 1921 you have had a single-line haul from the Indiana fields, whereas to the Rockford-Freeport you had a joint-line haul to those destinations from the Illinois mines?

A. That is correct.

Q. Do you think, or would you want to express an opinion on the Rockford-Freeport cases versus the difference between that and the Interstate cases, with respect to single-line versus a joint-line haul?

A. No, I don't think it enters into it.

Q. You want to maintain group rates?

A. That is right.

Q. Origin and destination?

A. Why, I think there could be some group rates at destination. I think the industries would like to see Rockford and Freeport get on the same basis, even though distance might call for a little higher rate at one or the other. Carriers won't object to that; that is, won't object to keeping Rockford and Freeport on the same basis.

Mr. Kaylor: All right, thank you.

Exam. Trezise: Are there any further questions? (No response.) Mr. Kuhls, you may be excused and thank you [fol. 1058] for your patience and tolerance and consideration.

(Witness excused.)

Exam. Trezise: All right, Mr. Cook.

Mr. Cook: Mr. Washer.

H. H. Washer was sworn and testified as follows:

Direct examination.

By Mr. Cook:

Q. Will you state your name and address for the record, please.

A. H. H. Washer, General Coal Agent, Chicago & Eastern Illinois Railroad Company, Chicago.

Q. How long have you been connected with the Chicago & Eastern Illinois Railroad?

A. Twelve years.

Q. Are you familiar with the rates involved in these proceedings?

A. I am.

Q. Have you prepared a statement containing your testimony?

A. Yes, I prepared a brief statement which I would like to insert in the record.

Mr. Cook: If there is no objection, Mr. Examiner, I would like to have Mr. Washer read that statement.

Exam. Trezise: He may read it providng he reads no argument.

The Witness: The Chicago & Eastern Illinois Railroad, [fol. 1059] serves mines in the Southern Illinois, Spring-

field and Danville Groups of Illinois and the Brazil-Clinton, Linton-Sullivan and Princeton Groups of Indiana. I shall try to explain briefly for the record the coal rate judgment as it now stands from the Danville Group of Illinois and from the Indiana mine groups to Rockford and Freeport.

Dealing first with Danville I may say that the present rate resulted from orders entered by the Illinois Commerce Commission in their Dockets 13558 and 13569 of March 7, 1928, plussed by the amounts of subsequent general increases. In those cases the Illinois Commerce Commission prescribed a rate of $2.00 per ton from Southern Illinois and required maintenance of existing differentials under Southern Illinois from the Fulton-Peoria, Springfield, Centralia, Belleville, DuQuoin and Danville Groups. After some litigation the carriers ultimately complied with these orders by tariff publications effective August 20, 1930, restricting the rates to intrastate application. This resulted in a reduction of 17 cents per ton in the rates from the several Illinois groups referred to. The Danville Group at that time was the same as Springfield and 30 cents per ton under Southern Illinois, as it is today.

Prior to the reductions made in the Illinois rates as a result of Dockets 13558 and 13569 the rate from Brazil-Clinton to Rockford and Freeport was the same as from Danville and Springfield and the net result of literal compliance with the Illinois Commission's orders was the estab- [fol. 1060] lishment of rates from the Danville and Springfield Groups 17 cents per ton under Brazil-Clinton.

Subsequent efforts on the part of the carriers to bring about through 13th Section proceedings an increase in the Illinois rates, Docket 23130, 182 I. C. C. 537, were unavailing because the Interstate Commerce Commission held that the prevailing rates from Indiana mines to Rockford and Freeport were so low that they would not be justified in requiring an increase in the Illinois intrastate rates. Following that the Milwaukee Railroad undertook to restore the relationship formerly existing between the Brazil-Clinton and Springfield Groups by a reduction in their Brazil-Clinton rates and ultimately succeeded. As the situation now stands the rates from mines on the Milwaukee Railroad, in the Brazil-Clinton Group, are the same as apply from the Danville and Springfield Groups of Illinois, whereas the rates of other lines serving the Brazil-Clinton field are 17 cents per ton higher.

The Milwaukee Road likewise reduced the rates from their Linton-Sullivan Group mines to Rockford and Freeport predicated on the normal differential of 10 cents per ton over their Brazil-Clinton rates and the I. C. Railroad, has since met the Milwaukee's rates from their Linton-Sullivan mines. The rates of other lines serving the Linton-Sullivan field are still on the old basis which, for some reason I have not been able to develop, reflect a differential of only 5 cents per ton over the Brazil-Clinton rates pub- [fol. 1061] lished by those lines. Therefore the rates of the Milwaukee and I. C. Railroads from their Linton-Sullivan mines are 12 cents per ton lower than from mines on other lines serving the Linton-Sullivan Group.

The rates from the Princeton Group are and have always been 7 cents per ton higher than the rates published by lines other than the Milwaukee and I. C. Railroads from the Linton-Sullivan Group to Rockford and Freeport and the Bonnville rates are 3 cents higher than Princeton.

The adjustment made pursuant to the Illinois Commission's orders in Dockets 13558 and 13569 of course had a disturbing effect upon the relationship between the Illinois origin groups involved and all of the Indiana Groups. For instance, the Princeton Group formerly enjoyed a rate difference under Southern Illinois of 18 cents per ton and that difference is now only 1 cent per ton, which it has been since the Illinois intrastate adjustment. Similarly the Linton-Sullivan Group was formerly 25 cents per ton under Southern Illinois and is now only 8 cents under, excepting mines on the Milwaukee and I. C. Railroads. The Brazil-Clinton Group was formerly 30 cents per ton under Southern Illinois and is now only 13 cents per ton under, excepting mines on the Milwaukee Railroad.

From what I have said it will be seen that the present rates and relationships have stood for a number of years and what we are seeking to do in this adjustment is simply [fol. 1062] to increase those rates by 15 cents per ton without disturbing the origin relationships. I feel that the present rates are too low and that the carriers are justly entitled to the increases sought and will receive the full benefit of these increases if they are granted. I am definitely persuaded that the rates which the carriers are proposing and which are now involved in these proceedings represent the only means of achieving the end desired.

By Mr. Cook:

Q: Do you wish to add anything further to that testimony, Mr. Washer?

A. That is all I care to say.

Mr. Cook: Cross examine.

Cross-examination.

By Mr. Cardy:

Q. Is this all the testimony, Mr. Washer, you intend to submit in justification of the increases in the rates on your line to points in Northern Illinois?

A. Yes.

Q. Now, when you say, referred to not disturbing the adjustment, did you have in mind restoring the old adjustment that was in effect prior to the disturbance by the increase or reduction in the Illinois rates?

A. No, the present adjustment does not contemplate that. I mean the proposed adjustment does not contemplate that.

Q. Is there any reason for your taking a different position in this proceeding than you did in the proceeding involving—what was that, 4368?

[fol. 1063] A. Well, there must be a reason, after ten years of fruitless effort in trying to bring about an adjustment in these rates, I can answer your question that somebody had to make a concession and I was one of those who made the concession.

The way I looked at it was this. Unless something was done, the present adjustment would be perpetuated and the present origin relationships would be perpetuated, so I don't see that we are changing that situation any.

Q. This is all the testimony you intend to submit in support of your 13th section proceeding?

A. That is all I personally propose to put in, yes.

Mr. Cardy: That is all.

Exam. Trezise: Do we have any further questions?

Mr. Scott: Yes, I would like to ask some, please, Mr. Examiner.

Exam. Trezise: All right, Mr. Scott.

By Mr. Scott:

Q. Mr. Washer, in your testimony you have pointed out the fact that the Milwaukee rates from the Brazil-Clinton and the Linton-Sullivan District to Rockford and Freeport and other points are lower than those prevailing from the mines on your line in those districts.

A. That is correct.

Q. In the proposal that you have already here that is now under consideration in these proceedings, you have continued that situation, that differential relationship in effect?

[fol. 1064] A. That is true.

Q. Do you mean to imply by that that you approve the relationship between the Milwaukee mines on the one hand and those from your mines on the other to these destinations?

A. No, I don't; never have.

Q. You feel, then, that the relationship between your mines and the Milwaukee mines should be on the same basis?

A. Well, I feel they should, yes.

Q. And is it further your contention that this should be brought about by reducing the rates from your mines to those in effect from the Milwaukee in order to continue the proper relationship between the Indiana groups on the one hand and the Illinois groups on the other?

A. Not necessarily.

Q. You mean, then, that the disruption that was made in 1930 by the orders of the Illinois Commission in reducing the rates to Rockford and Freeport from Illinois groups 17 cents per ton with no similar reductions from Indiana was proper?

A. No, sir, I don't think that was proper, either.

Q. Then the fact that you have offered here rates to the Commission for approval which propose to continue the relationship in effect do not necessarily mean that the C. & E. I. Railroad approve that but are merely done for the purpose of increasing the level of the rates to this destination territory?

A. That is the primary object, yes.

[fol. 1065] Q. You further stated in your testimony that the rates from the Princeton group are and have always been 7 cents per ton higher than the rates published via lines *published via lines* other than the Milwaukee and I. C.

Railroads from the Linton-Sullivan group to Rockford and Freeport and the Boonville rates are 3 cents higher than Princeton. Now, that is the situation in effect at the present time, but isn't it a fact that prior to the reductions from the Milwaukee mines that the Princeton, Ayrshire and Boonville rates were also 7 cents and 3 cents, respectively, over the rates from the Milwaukee mines in the Linton-Sullivan group?

A. Oh, yes, that is true.

Q. So that that situation, where they are not 7 cents from the Princeton-Ayrshire group over those from the Milwaukee was brought about by the action of the Milwaukee in reducing their rates?

A. It was.

Mr. Scott: All right.

Mr. Cardy: Just one other question:

By Mr. Cardy:

Q. Mr. Washer, as I summarized your testimony it appears that you published those rates in order to continue an apparently unlawful adjustment in the Brazil-Clinton and Linton-Sullivan rates.

Mr. Hunter: Oh, I object to that.

Exam. Trezise: Let's cut out the "apparently unlawful" [fol. 1066] and ask him what he thinks about the rates.

By Mr. Cardy:

Q. What do you think about the present adjustment?

A. Do you want me to answer that?

Exam. Trezise: Yes.

The Witness: Frankly, I don't like it too well, but I think it is the best way out of a bad situation.

By Mr. Scott:

Q. The present adjustment?

A. The present adjustment.

By Mr. Cardy:

Q. In other words, you are not maintaining that adjustment is entirely proper as it stands today?

A. As we propose, you mean?

Q. As it stands today and as you propose it?

A. That is right.

Mr. Cardy: That is all.

Exam. Trezise: Any further questions?

By Mr. Bather:

Q. Mr. Washer, you dealt first with the rate situation in Danville. What is the volume of tonnage of coal from Danville to Rockford?

A. There isn't any.

Mr. Christiansen: Mr. Washer, I have one question I would like to ask you.

Exam. Trezise: Mr. Christiansen.

By Mr. Christiansen:

Q. How long have you been with the C. & E. I. Railroad in the coal traffic department?

[fol. 1067] A. Twelve years.

Q. Were you connected with the C. & E. I. prior to that time?

A. No, I was with the L. & N. road prior to that time.

Q. How many years have you been familiar with the rate adjustment in this particular territory?

A. The coal rate adjustment in this territory?

Q. Yes.

A. About fourteen years.

Q. This rate adjustment into the Northern Illinois and the Southern Wisconsin territory has been in almost constant litigation since about 1921 or 1922, has it not?

A. I think that is true, yes, sir.

Q. According to your statement, on page 4, you would continue that rate adjustment into the future for further litigation for the next 25 years or so?

A. I don't—as I say, I don't like this adjustment too well and I don't think it is going to cure everything.

Mr. Christiansen: Thank you.

Redirect examination.

By Mr. Hunter:

Q. Mr. Washer, on page 2 of your prepared statement you will note that you state that the Interstate Commerce Commission held in Docket 23130 that the prevailing rates from the Indiana mines to Rockford were too low. Do you mean by that statement that the Commission held that all of the rates from the Indiana mines were too low or the [fol. 1068] rates from certain of the Indiana groups were too low?

A. The Commission made no distinction.

Q. Are you familiar with that proceeding?

A. You mean in 23130?

Q. Yes.

A. Yes.

Q. Do you know that the Commission had before it in that proceeding only the rates from Boonville and the Princeton groups and did not have under consideration the rates from the Indiana groups?

Mr. Stadell: Now, I object to that.

The Witness: I don't think so. I don't agree with that.

Exam. Trezise: You didn't mean it that way, did you? You didn't mean to say——

Mr. Hunter: I meant so far as the testimony as produced in that proceeding is concerned.

By Mr. Hunter:

Q. It did not have any testimony relating to the rates from the Northern Indiana groups, is that correct?

Mr. Stadell: I object to that, now. The record in that case will speak for itself and Mr. Hunter is very obviously confused, because the Commission's report, which, of course, will also speak for itself——

Exam. Trezise: Well, there is no question about that. The Commission had under consideration all the groups in Indiana. We take that as a matter of fact. But what you [fol. 1069] meant to ask, Mr. Hunter, I think, was that when the Commission made that ruling, on page 550 of 182 I. C. C. 537, you had in mind that the Commission was asking about some other group than the Brazil-Clinton and had in mind

the Boonville group or Princeton-Ayrshire. That was the question, I think, you——

Mr. Hunter: That is correct.

Exam. Trezise: You should have formulated, anyhow. I don't want to put words in your mouth, but I think that is what you wanted to ask.

Mr. Hunter: That is correct.

The Witness: Did I answer that?

By Mr. Hunter:

Q. Yes, would you answer that?

Exam. Trezise: Did we get an answer to that?

By Mr. Hunter:

Q. Would you answer that question, please?

A. Yes. In the findings, the Commission simply referred to Indiana groups. They found they would not be justified in increasing the Indiana rates, in view of the low rates prevailing from the Illinois mine groups.

Q. You participated in 23130 personally, did you?

A. Yes, I did.

Q. Do you know whether the Commission had before it any evidence with respect to the rates from Northern Indiana mines, whether those rates were involved in the rate testimony in that particular proceeding?

A. I didn't get in on the initial stages of that case and I [fol. 1070] don't really know.

Q. Yes. So this statement that you read into the record here is based on the Commission's decision?

A. Based on their findings, yes.

Mr. Hunter: That is all.

Mr. Stadell: I have just a couple of questions.

Exam. Trezise: Mr. Stadell.

Recross-examination.

By Mr. Stadell:

Q. You are appearing here on behalf of the C. & E. I. in support of the proposed adjustment, aren't you?

A. That is true.

Q. And you are asking the Commission to approve it?

A. That is correct.

Q. You are not asking them to prescribe anything different than is proposed and under suspension?

A. Well, if they can find a happier solution, it is all right with me.

Q. Happier for whom?

A. For the C. & E. I. railroad, for example.

Q. And you would rather have them prescribe something other than is under suspension, is that correct?

A. Well, as I say, I am not entirely satisfied with the adjustment as we have published it. But in order to accomplish something, I would rather see this adjustment approved rather than let it go by the boards entirely. Now, [fol. 1071] if the Commission can figure out a better adjustment, I would be glad to see it done.

Q. Regardless of whether that better adjustment resulted in additional increases in the Indiana rates so as to be a more proper level in comparison with the rates to Illinois?

Mr. Scott: I object to that, Mr. Examiner. What does he mean by putting on a more proper level? It is not shown to be improper. That is for the Commission.

The Witness: I am willing to abide by the Commission's decision.

By Mr. Stadell:

Q. You are not asking them to publish anything different than is under suspension?

A. I am not asking them to.

Q. Would you be perfectly satisfied, the C. & E. I. Railroad will, they will approve the adjustment that is under suspension from the Indiana group?

Mr. Cardy: I object to that. He hasn't said that.

Mr. Stadell: I am asking him whether that is a fact or not. Let's find out.

The Witness: I say I am not entirely satisfied with it but I would rather see that done than to see the present adjustment stand as it is.

By Exam. Trezise:

Q. The proposed you think is better than the present?

A. That is it.

Q. But you don't think so much of the proposed?

[fol. 1072] A. I don't think entirely too much of the proposed. As I say, Mr. Examiner, we made a concession in order to accomplish this adjustment. When you make a concession you certainly are not entirely satisfied; otherwise it wouldn't be a concession, it wouldn't be necessary to make a concession.

By Mr. Bather:

Q. In other words, the C. & E. I. want to charge the other railroads 15 cents more for the hauling of the coal, don't they?

A. No, I didn't say that at all. All we want is to get 15 cents more money out of it, which we are entitled to.

Q. Who do you mean, "we"?

A. I mean the railroads.

By Mr. Cardy:

Q. Who did you have to make that concession to?

A. Well, you understand we have been handling this thing for approximately ten years and gotten nowhere. Now, there are several different factions, you appreciate, there are several different factions among the railroads which causes that situation to exist. One of those factions had to make some of those concessions in order to bring about some coordination.

Q. In other words, Mr. Washer, the controversy among the railroads has resulted in the disturbance in the Indiana adjustment you now have before the Commission and you want the Commission to straighten it out, isn't that correct?

A. I don't understand that question.

Q. I will repeat it. The controversy between the railroads [fol. 1073] has resulted in the publication of this adjustment which you feel is not proper and has not been proper for more than ten years and you are, in effect, requesting the Commission to establish a normal freight adjustment so that you won't be bothered in the future, is that true?

A. No, I am not requesting the Commission to do anything except to approve what we published here.

Exam. Trezise: Is that all.

Mr. Cardy: That is all.

Exam. Trezise: Are there any further questions? (No response.) If not, you may be excused, Mr. Washer, and we will adjourn until 10 o'clock tomorrow morning.

(Witness excused.)

(At 4:20 P. M. June 18, 1943, adjourned to June 19, 1943, at 10:00 o'clock A. M.)

[fol. 1074] Morrison Hotel, Chicago, Illinois,
June 19, 1943.

Met, pursuant to adjournment, at 10:00 o'clock a. m.

Before: R. N. Trezise, Examiner.

Present: F. B. McElroy.

Appearances: As heretofore noted.

PROCEEDINGS

Exam. Trezise: All right, gentlemen; when you are ready, let us continue.

J. E. FLANSBURG was sworn and testified as follows:

Direct examination.

By Mr. Hunter:

Q. Will you state your name, occupation, and business address, please.

A. J. E. Flansburg, general commerce agent, Chicago & North Western Railway Company, 400 West Madison Street, Chicago, Illinois.

Q. And how long have you been general commerce agent of the North Western Railway Company?

A. About ten years.

Q. Mr. Flansburg, the North Western Railway Company [fol. 1075] is in the process of reorganization under Section 77 of the Bankruptcy Act, and Charles M. Thomson is trustee in possession and operating the property, is he not?

A. Yes, sir.

Q. And has been since on or about July 1, 1935?

A. That is correct.

Q. Will you state the duties of your position as general commerce agent?

A. Well, I have to do with testifying in all cases involving freight rates, state and interstate, in the territory

served by the North Western Railway, and in charge of consideration of informal reparation cases, undercharge cases, prior to the time suit is brought, and sometimes after. Generally have to do with everything pertaining to freight rate litigation of almost any kind or character.

Q. Your testimony that you are to present in this proceeding will be on behalf of all the carriers, and the North Western Railway Trustee specifically; is that correct?

A. That is correct.

Q. And that will be the nature of your testimony, Mr. Flansburg; I mean with respect to traffic aspects of the issues involved?

A. Yes, sir.

Q. You are familiar with the issues involved?

A. Yes, sir.

Q. You are not a cost accountant or an operating expert?

[fols. 1076-1081] A. No, sir.

Q. And have you reduced your testimony in statement form, copies of which have been distributed to all parties of record prior or at this hearing?

A. Yes, sir.

Q. If there is no objection, will you proceed to give your statement, Mr. Flansburg?

[fol. 1082] The Witness: A. Yes, sir.

Mr. Hunter: May that exhibit be marked No. 16 for identification, and received in evidence.

Exam. Trezise: Let *me* be marked and received.

(Respondents' Exhibit 16, Witness Flansburg, received in evidence.)

Exam. Trezise: This is off the record:

(Discussion outside of the record.)

The Witness: The Chicago & North Western Railway Company, hereinafter called the North Western, is primarily a destination carrier in Northern Illinois and Southern Wisconsin, and with a few exceptions does not serve the mines producing coal in Illinois, Indiana, and Western Kentucky. We are interested, however, in the measure of rates proposed in this readjustment to the destination territory involved.

The North Western is a party to, and had a hand in the proposal as reflected in the tariffs under suspension. It is

not our opinion that any outside method of transportation by truck or water, or the competition of gas or fuel oil will have any adverse effect upon the proposed rates; but, naturally, should any situation of this kind develop in the future, it can be given consideration at the time of such development, and is something which is separate and apart [fol. 1083] from the question as to whether or not the proposal in this case is in excess of reasonable maximum rates.

The North Western serves the state of Wisconsin as a whole, and transports Bituminous coal, in carloads, from these origin districts to destinations all over the state; and it is apprehensive that if the proposed schedules are not found to be justified it will represent a disturbing effect from a revenue standpoint upon the existing adjustment from these origins to Wisconsin beyond Beloit. In the case of Fairbanks-Morse & Company, Docket 25419, decided July 20, 1933, the Commission had before it the rates on Bituminous coal, in carloads, from mines in Illinois, Indiana, and Western Kentucky to Beloit, Wisconsin, as contrasted with the rates to Rockford, Illinois. At that time the rate to Rockford from Southern Illinois was $2.00 per ton for a distance of 352.1 miles, and to Beloit, Wisconsin, $2.75 per ton for a distance of 370.2 miles. In that report the Commission found that the $2.75 rate from Southern Illinois to Beloit was not unreasonable but was unduly prejudicial to Beloit and unduly preferential of Rockford to the extent it exceeded the rate to Rockford by more than 25 cents per ton.

Had the carriers at that time complied with the order by increasing the rate to Rockford from Southern Illinois to $2.50 per ton, an entirely different situation would have been presented than is before the Commission now. In no case since the Lake dock coal cases, wherein the Interstate [fol. 1084] Commerce Commission approved a rate of $2.75 per ton to Beloit has that rate ever been found unreasonable from Southern Illinois. In other words, had the rate of $2.75 per ton to Beloit been retained, as there was no finding that it was unreasonable, the existing rate to Beloit would be $2.95 per ton by adding to the original rate the general increases authorized, of 20 cents per ton since that time.

In the second report in the Fairbanks-Morse case the Commission again found the rates assailed to Beloit to be

not unreasonable but unduly prejudicial to Beloit and unduly preferential of Rockford to the extent they exceeded the rates to Rockford by more than 15 cents a ton. It will be noticed that the proposal in this case is considerably below what the rate to either Beloit or Rockford would be had the original rate to Beloit been maintained, and would be more in consonance with the existing rate to Janesville, Wisconsin, for a not much greater distance.

Mention has been made in this case of the decision of the Wisconsin Commission on Bituminous coal, in carloads, from the Lake Michigan docks to Wisconsin destinations; and in order that this record may show the findings of the Commission and the measure of the scale prescribed in that case to apply from the nearest dock, attention is invited to my Exhibit No. 16 which indicates for 300 miles shown in the report the rates prescribed by mileage blocks [fol. 1085] under date of March 21, 1939, compared with the Holmes and Hallowell Scale for the same blocks, and it will be noticed that the general average of the Wisconsin scale is 95.7 per cent of the Holmes and Hallowell Scale.

There was no general requirement in the order that the railroads were compelled to equalize rates from the docks, but it is true that certain equalizations have taken place due to commercial and carrier competition. It will be noted from the order, there were certain restrictions as to equalization; but it is the opinion of the company which I represent that such equalization as is in effect today is no different from that which prevails where a long line serving an origin group such as Southern Illinois desires to be on the same level of rates to a given destination as prevails over the short line from the same group to that destination.

Carrier competition also has its effect. The North Western serves docks at Kenosha, Racine, Milwaukee, Port Washington, Manitowoc, Sheboygan, Green Bay, and Marinette. The Milwaukee Railroad serves Racine, Milwaukee, Green Bay, and Marinette; and the Soo Line serves Manitowoc and Milwaukee. If, therefore, the varying dock operators are to be placed in a position to secure traffic to competitive points located on different railroads, and if the consumers are to have the opportunity *to* purchasing coal at more than one dock, it is natural for certain equalizations to take place. To Beloit, for example, directly in- [fol. 1086] volved in this case, the rates from Racine, Kenosha, Milwaukee and Sheboygan are the same; namely,

the rate from Milwaukee the nearest dock, but it is not equalized from Port Washington, Manitowoc, Green Bay, or Marinette. It is recognized that according to the destinations that may be selected, the equalization will result in a lower average level if all mileages from the equalized docks are taken into consideration; but it does not alter the fact that the scale prescribed by the Commission for application from the nearest dock does reflect an average of 95.7 per cent of the Holmes and Hallowell Scale. That the coal which originates on the Lake Michigan docks and moves to destinations in Wisconsin has previously paid a rail transportation charge from the mine to the lower Lake port in addition to a dumpage charge at the port from the dock to the vessel, the water charge from the Lake Erie port to the Lake Michigan port plus the cost of something from the boat to the dock subject to such degradation as may take place in transit.

Likewise, the exhibit shows the Midland Electric scale prescribed by the Commission from the Fulton-Peoria District to Iowa destinations in 232 ICC 5, and this shows a general percentage of the Holmes and Hallowell Scale for a distance of 300 miles of 94.2 per cent. The scales used are the basic ones shown in the report, and do not include any of the general increases. In making comparisons of this kind, I am not advocating that the rates within Illinois and [fol. 1087] to Beloit, Wisconsin, should be based upon a strict distance from each origin group, but it is presented for showing generally that the rates proposed are not unreasonable in comparison with the scales shown.

Mr. Hunter: We tender Mr. Flansburg for cross-examination.

Exam. Trezise: I have heard nothing, with the revisions that we have made today, that would stamp this as argumentative, to the extent that the Examiner would rule it out.

Mr. Hunter: We tender Mr. Flansburg for cross-examination.

Cross-examination.

By Mr. Wilkinson:

Q. May I ask a few questions, Mr. Flansburg——

Exam. Trezise: Mr. Wilkinson.

By Mr. Wilkinson:

Q. With reference to the decision in the Lake Dock coal cases, fixing a rate of $2.75 per ton from Southern Illinois to Beloit, that case also required maintenance of other rates from Southern Illinois to practically all destinations in Wisconsin, did it not?

A. All of them in Wisconsin, I would say.

Q. And that requirement was an increase in the rates which had been published by the carriers, was it not?

A. From Illinois, yes.

Q. From Southern Illinois?

A. Yes.

Q. And Southern Illinois was the only origin point involved in the Lake Dock coal cases, wasn't it?

A. That is right.

[fol. 1088] Q. Now, is it or is it not a fact, Mr. Flansburg, that following that decision in the Lake Dock coal cases all of the carriers serving origin groups in the other districts in Illinois, Central Illinois,—Belleville, Danville, and all the rest, and the origin groups in Indiana, increased the rates from those other origin groups in Illinois and all the origin groups in Indiana to all of these destinations in Wisconsin, including Beloit, the exact same amount in cents per ton as the increases required from Southern Illinois to those destinations.

A. That is right.

Q. And in that way maintained the differential which had previously existed?

A. Yes, sir.

Q. And that was a voluntary action on the part of the carriers, in which the North Western Railway acquiesced and went along with?

A. Yes, sir.

Q. Now, you have attached in your Exhibit No. 16, a mileage scale that applies from the Lake docks in Wisconsin to destinations in Wisconsin; and you stated in your evidence that there is a certain amount of equalization of those rates from the more distant docks; now, is that limitation, or is that equalization made up by applying the rate from the dock which is closest to the destination, and then all other of the docks in Wisconsin having the same rate, where the distance from the most distant of such docks

[fol. 1089] is not more than 50 per cent greater than the distance from the nearest dock?

A. That is right.

Q. In the working out of that plan you have given an illustration of rates from Racine, Kenosha, Milwaukee, and Sheboygan to Beloit, and you say that the Port Washington and Manitowoc docks are not included; now, under that equalization the rates from, we will say Sheboygan, which have been equalized to a dollar a ton, or whatever the rate may be to equal the Milwaukee, could the dock next north of Sheboygan claim an equalization with Sheboygan under the application of your equalization theory.

A. They could claim it; but under the equalization theory or the 50 per cent principle, if they would be beyond that they would not get it; at least, they would have to go to the Commission for it. But if they were within the limitation, they could ask for it and it would be up to the railroad to decide whether or not they would equalize.

Q. Then this is correct: That you take the nearest dock, and all of the docks that do not exceed more than 150 per cent of that nearest dock automatically get the nearest dock's rates.

A. No, it is not automatic in its operation. The railroad may or may not decide to equalize, even if it is within the 50 per cent equalization; because the equalization does not apply from all places to all destinations within the circuity limitation.

[fol. 1090] Q. It actually does apply; you have actually published your rates on the basis of equalization?

A. A few, from places of real consequence, where there is movement or contemplated movement.

Q. And have you made any computation to determine what the various percentages of the Holmes and Hallowell Scale or the Midland Electric Scale, or any other scale,—the actual rates from the docks to these destinations of any consequence may be?

A. No, I have not.

Q. These percentages that you show in here are merely a basic scale relationship to the other basic scales?

A. That is right; that is the maximum prescribed by the Commission for the distance hauled from the shore dock.

Q. Would that not be similar to computing the relationship, we will say for rates from the Springfield Group by taking the distance from the nearest point in the Springfield

Group, Bloomington, and computing the relationship for rates from Bloomington, any points in the Springfield Group?

A. If the rate was prescribed from Bloomington to distances within that destination group.

Q. Well, Bloomington is within the Springfield Group.

A. Yes.

Q. So it would come within it?

A. Yes, we look upon that dock adjustment up there as a [fol. 1091] group adjustment to the extent equalization takes place.

Q. Your real interest in this case, Mr. Flansburg, is to prevent the spreading of what you consider low level of rates in Illinois into Wisconsin?

A. That is right; and also we serve Northern Illinois.

Q. Yes, but primarily the interests of the North Western, you have battled for many years to keep intrastate Illinois level of rates from spreading into Wisconsin?

A. Yes, that is right.

Q. And you are more interested in that than you are in the measure of rates to Northern Illinois?

A. No, I do not think I draw a distinction between the two.

Q. You are interested in both?

A. That is right.

Q. As a destination carrier, the North Western is not particularly interested in securing a breakup of the old standard differential that formerly applied as between the Indiana groups and the Illinois groups to Northern Illinois, which was the same as that currently applied to Wisconsin?

A. No, we are not particularly interested in the groups, as long as the resulting rates are all right.

Q. When you find you get your division out of it, you do not care where the coal comes from, out of Illinois or Indiana?

A. That is right.

Mr. Wilkinson: That is all.

[fol. 1092] Exam. Trezise: Well, Mr. Flansburg, is this statement incorrect,—which is found in volume 251, page 193, the Fairbanks-Morse case: On that date, meaning May 1, 1939, the distant scale of rates on lump coal, and a lower one on fine coal, were prescribed for application to the shortest possible distance from the nearest dock to points

in Wisconsin, and the rates thus determined were authorized but not required to be applied from the other docks from which the distances were not more than 100 per cent greater than those from the nearest docks.

A. The only change, Mr. Examiner, in that was the change from circuity limitation of 100 per cent to 50 per cent in the last order; that is all, otherwise it is good. And it was correct at that time.

Exam. Trezise: Any further questions?

Mr. Morgan: Off the record.

(Discussion outside of the record.)

Exam. Trezise: Let us go back on the record, and take the question that we have right now; you cannot settle all cost rate generalities, so we are going to take the other question we have right here now: Shall we cross-examine Mr. Flansburg further? I think the Examiner would have to rule that now is the time to cross-examine; and unless there is something so abstruse, complicated and complex that it is impossible to understand, we will have to go ahead with [fol. 1093] his cross-examination now; unless that situation appears; it has not yet appeared to the Examiner's mind.

Mr. Morgan: You mean in respect to this particular exhibit?

Exam. Trezise: In respect to Exhibit No. 16; let us cross-examine. Mr. Stadell, do you have some questions?

Mr. Stadell: I have a few, yes.——

By Mr. Stadell:

Q. In answer to a question by Mr. Wilkinson, you stated that when the rates from Southern Illinois and Beloit and other points in Wisconsin were increased in compliance with the Commission's decision in the Lake Dock coal cases, that rates from other districts in Illinois and Indiana were increased at the same time, in the same amount; is that right?

A. That is right.

Q. Are you positive of that, Mr. Flansburg; have you checked that?

A. I have not checked it, but I have given that as my understanding of it.

Q. You are not positive they did go up at the same time, or that they ever went up in the same amount, are you?

A. Well, that is my understanding and remembrance; I did not check the tariffs.

Q. When was the last time that you checked it; your understanding is based upon what happened in 1924?

A. That is right.

[fol. 1094] Q. The rates prescribed by the Wisconsin Commission from the Lake Michigan docks and Lake Superior docks into Wisconsin to destinations in Wisconsin became effective May 1, 1939?

A. That is right.

Q. And the Commission prescribed that scale, and said that rates from the docks should be based upon the use of that scale and the shortest possible distance from the nearest dock to the destinations involved?

A. That is right. Quite often they are single lines, due to the location; but that is what the order requires.

Q. And then the railroads, after establishing the rate to a given destination, like Beloit we will say, from the nearest dock by use of the shortest possible distance and this scale, could then apply that same identical rate from farther distance docks to the same destination, so long as the distance from the farthest distant dock did not exceed the distance from the nearest dock by more than 100 per cent.

A. They could, subject to suspension.

Q. And you say that limitation now is 50 per cent, instead of 100 per cent?

A. Yes, sir.

Q. Is that limitation upon the distance, or the shortest possible route, or is it upon the distance over the tariff route over which the rate actually applies?

A. The limitation acts on the same principle as the scale [fol. 1095] is prescribed.

Q. And that is on the shortest possible distance?

A. That is right.

Q. So that it would be possible that the distance over the tariff route from the farther distant dock could be considerably greater than 50 per cent in excess of the distance?

A. It could be; but generally, I do not think it is; because primarily it is usually a single line operation; the short distance is usually single line.

By Exam. Trezise:

Q. And when you say shortest possible distance, you mean shortest possible distance via any connecting carriers?

A. That is right, over which cars may be transported without transfer of lading.

By Mr. Stadell:

Q. And that distance could be computed over a single line, the one that made the shortest possible distance, or could be computed over a combination of several lines?

A. That is right.

Q. Now, you stated that there was no provision in the Wisconsin Commission's order in that case that you had to equalize the rates from various docks?

A. That is right.

Q. It is true, however, is it not, that for twenty to twenty-five years prior to this decision the order of which you show in your Exhibit 16, that the Wisconsin Commission had by [fo]. 1096] orders in various cases required the rates from various docks to be equalized to destinations in Wisconsin?

A. That is right; and they used a higher scale.

Q. And the railroads generally, in complying with this decision which became effective May 1, 1939, have availed themselves of this privilege of equalizing the rates from the various docks?

A. Quite often, to the larger points of consumption; yes.

Q. It is quite general throughout Wisconsin, isn't it?

A. I would say the eastern half; the western half, no.

Q. You did it for the most part where the rates were equalized prior to that time, by order of the Wisconsin Commission?

A. Pretty well so, yes.

Q. Now, the Lake Dock coal cases which you refer to in your testimony, the Interstate Commerce Commission, you stated, prescribed a rate of $2.75 from Southern Illinois to Beloit; is that correct?

A. That is right.

Q. And that rate was prescribed to bring about a certain relationship between the Interstate rates from Southern Illinois and the Intrastate rates from the Wisconsin docks to destinations in that state?

A. It really operated as a minimum from Illinois, as a reasonable minimum from Illinois, compared with the then existing rate from the docks, yes.

Q. You say reasonable minimum; did the Commission [fol. 1097] prescribe it as a minimum?

A. They said that the rates from Illinois to those points should be to relieve certain prejudices.

Q. Prejudices against intrastate shippers?

A. That is right.

Q. For example, to Janesville, do you recall that they prescribed the $2.75 rate to bring about a spread of $1.17 per ton, Southern Illinois over the $1.58 rate from the docks?

A. I think that is the figure; the $2.75 applied from Illinois to all points in Southern Wisconsin on and north of the Madison line. Now, whether those distances would vary to the docks, I couldn't say.

Q. Now, since that time the rate to Janesville, up until a short time ago, was maintained at $2.75; and later increased to $2.90 by virtue of the increase in Ex Parte 115?

A. That is right; and subsequently changed under the General Motors order from Illinois.

Q. Well, it was subsequently changed in the Creamery Package case, was it not, to $2.79?

A. Well, I used the General Motors, because General Motors was specifically to Janesville, and Fairbanks-Morse was not.

Q. Well, the rate to Janesville today, however, is $2.79, or 4 cents per ton higher than was required by the order of the Commission in the Lake Dock coal case; is that right?

A. That is right.

[fol. 1098] Q. And by virtue of the Wisconsin Commission order in the Wisconsin case, included in your Exhibit No. 16, the rates from the dock as to Janesville were reduced May 1, 1939, 53 cents per ton on fine coal and 38 cents per ton on large coal, were they?

A. That figure is about right.

Q. So that the spread today, instead of being $1.17, is about $1.60, isn't it, Southern Illinois over dock?

A. That is right.

Q. The carriers were free to comply with that order, were they not, by reducing the rates from the Lake Michigan docks to bring about a spread of $1.17 versus Southern Illinois?

A. Not from my reading of the order; I do not say that we would. But I do not think the order read that way.

Q. The order was a preference and prejudice order?

A. That is right.

Q. Under Section 30?

A. No, I wouldn't say that it is; because as I recall it, they used to then existing rates from the docks as the measure to prescribe the rates from Illinois, and it was not the usual alternative publication.

Q. It uses then existing intrastate rates?

A. That is right; in other words, there wasn't anything in that order, as far as I could see, that there was any authority or prescription or order for the railroads to reduce the [fol. 1099] Michigan docks, because they took the rates within Wisconsin as they were; and I do not believe they specifically looked into the issue under Section 13 of the Act within Wisconsin. That is the way I recall it.

Q. There was nothing in that order that would have prevented the railroads from complying with it by reducing the rates from the docks?

A. Oh, no; we can always go below a reasonable maximum rate if we so desire, subject to suspension.

Q. And since that time that order in the Lake Dock coal cases has been set aside, has it not, by the Interstate Commerce Commission?

A. Yes, sir.

Q. Upon petitions filed by the Illinois-Indiana producers?

A. Yes, sir.

Q. And is no longer in effect now; rates from those Wisconsin docks were prescribed by the Wisconsin Commission, were they, as local rates?

A. Yes, sir.

Q. Now, in answer to a statement by Mr. Wilkinson to the effect that you probably were more interested in preventing the spread of the low level of rates in Illinois,——

A. I didn't say that.

Q. I know you didn't; I say he said that, and as I understood, you acquiesced in the statement.

[fol. 1100] A. No, I did not.

Q. I wondered if you understood it.

A. No, I said I was interested in both; that is, the rates to Northern Illinois as well as the rates into Wisconsin. He put it more strongly to Wisconsin than I agreed to.

Q. The portion of the statement that I was referred to was the portion referring to your interest in preventing the spread of the low level of rates in Illinois to Wisconsin; I wanted to amplify that. Are you more interested in preventing a spread of the still lower level of rates from Indiana to Wisconsin?

A. I am very much interested in that, the same as Illinois or West Kentucky, or any other origin field into that same state.

Q. Now assume, for the purpose of my question that it should be shown in this case that the average level of the rates from Wisconsin down to destinations in Wisconsin were lower, or is lower than the average level of the rates from Illinois to Northern Illinois, would you know of any justification for that situation?

A. You are starting out with an assumption that I doubt very much; but I will put it this way:——

Q. I say, for the purpose of my question, assume that, and then we will later submit proof.

A. Oh, relatively, the *d*ates within the two states, state and interstate, should not be materially far apart, whether you use distance or grouping.

[fol. 1101] Q. Treating them both like for like, group and distance; you said you look upon a dock adjustment as a group adjustment.

A. They should not be far apart, no.

Q. Well, if there should be any difference, the lower level should prevail in Illinois, should it not?

A. Well, under the class rate theory you could say yes, to that; but under the coal adjustment, I doubt it.

Q. Well, what would be the reason for having a lower level of rates on coal between points in Wisconsin than between points in Illinois?

A. From the transportation standpoint, I would say there wouldn't be any, except the difference north of the dividing line in the class rate territory.

Q. And the difference north of the dividing line would justify a higher level in Wisconsin than Illinois?

A. That is right, under that premise.

Mr. Stadell: That is all.

By Mr. Christianson:

Q. Mr. Flansburg, on page 4 of your exhibit No. 16, you show that percentage that the Wisconsin scale is of the Holmes and Hallowell Scale?

A. That is right.

Q. Column 3; is that a lump coal scale or fine coal scale?

A. Lump.

Q. The fine coal scale is generally about 15 cents a ton lower than lump coal?

[fol. 1102] A. Within Wisconsin it is roughly 85 per cent of the lump scale.

Q. In meeting competition as between different kinds of coal, is competition more severe on the industrial coal than on the so-called domestic coals?

A. I sort of hesitate to answer that, on the ground of competition; but I will say this: That there is more litigation and more evidence put in pertaining to fine coals than domestic coals.

Q. It is a fact that most industrial buyers buy their coal on the B. T. U. basis, or some other basis that is more refined, than the average domestic users?

A. I don't know how they buy it, but they buy a lot of it; and they are very jealous to secure as low rates as possible on fine coal.

Q. The real competition that the producers in Illinois or Indiana or Western Kentucky, for instance, would have to meet in Southern Wisconsin, competition as far as Lake dock is concerned, would be the lump coal rates, not fine coal rates; is that right?

A. No, I would not say that; I doubt that very much.

Q. In Column 5 you show the percentage relationship, 4 and 5, that the Holmes and Hallowell Scale is of the Midland Scale; I note you start the Midland Scale at 30 miles.

A. I started it there because that is where the Holmes and Hallowell started.

[fol. 1103] Q. In fact, there is no hauls from the Fulton County District, where this was prescribed, that meant into Iowa—much less than 50 miles.

A. That is right.

Q. And the using of the so-called 40-mile basis for the 30-mile rate block there, you get a higher percentage of the Holmes and Hallowell Scale than you normally would get, when you figure——

A. Oh, it would make a very small percentage or difference, but it would make a difference. That is automatic, I think.

Q. Mr. Flansburg, did you hear Mr. Nelson's cross-examination with reference to single line and joint line coal from the Fulton-Peoria District, having reference to Dixon on the one hand and Linwood on the other hand?

A. I did not hear all of it; I was not always able to hear.

Q. Mr. Nelson said that one of the reasons for a lower level of rates to Linwood was because the Chicago, Burlington & Quincy maintained single line rates from the Fulton County District to Linwood, whereas to Dixon they had joint line rates; does your railroad have a single-line from Fulton-Peoria, to Dixon?

A. I assume you mean from Mill Grove?

Q. That is correct.

A. Where we have trackage rights over the M. & St. L.; and we consider that single line, yes.

Q. Does your railroad serve the plant of Medusa Portland Cement Company without switching absorption from connecting line?

[fol. 1104] A. Yes.

Q. Do you believe that there ought to be a lower level of rates from the Fulton County District, or any other district—because of a single line movement as against a joint line movement?

A. Well, in this day and age I would say that single and joint line operate the same. The conditions under which they operate are variable, so it would be rather difficult to answer that directly.

Q. Do you know of any commodity that is as highly competitive in the sale of a product as cement, other than coal?

A. Well, I will put it this way: I don't know anything about cement competition, except this: That the Commission about fifteen years ago prescribed a cement adjustment in the Western Trunk Line territory practically letting everybody sit where they are; and we have not had a word of complaint since. So I assume that such competition as there is is based upon a stable rate structure.

Q. In the carriers' presentation of the transportation burden which they say that intrastate rates suffer, and specifically considering Dixon, Illinois as a point, as against an interstate point, would you say there was any burden

against interstate commerce in the Dixon rate from the Fulton County District, of approximately $1.50 for 120 miles as against a most competitive, in so far as the cement industry is concerned on Linwood, Iowa, where an Inter-
[fol. 1105] state rate prevails of $1.25 for 113 miles.

A. I would say not, on competition as between individuals, as you confined it; but I do think there is revenue discrimination, state versus Interstate there. I would not say that Dixon and the Linwood Cement people compete in the same territory. You have La Salle, Mason City, and half a dozen others; and they all sell in each other's territory; and I do not think the fate has anything to do with that.

Mr. Christianson: I think that is all.

By Exam. Trezise:

Q. Now, before we get too far away from this point, Mr. Flansburg, there is no 13th Section proceeding here pending with respect to the Wisconsin dock rates; do you know that?

A. Oh, yes; I really have known that for some time.

Q. There are no rates from the Wisconsin docks that are subject to any Wisconsin orders whatsoever, that apply to Rockford, Illinois?

A. That is right.

Q. There are no rates involved in this proceeding where there is any proposal whatsoever to change the rates to Beloit from any Illinois group, is there?

A. Yes.

Q. Which one?

A. From the Indiana groups to Beloit.

Q. I said Illinois groups.

[fol. 1106] A. I beg your pardon; the answer is no.

Q. Nor Kentucky?

A. No.

Q. And the only ones are from Indiana, is that right?

A. That is right.

Q. All right; I wanted anybody that read this record to know that these Wisconsin docks haven't anything to do with this, except with respect to possibly these Indiana origin groups, as far as the proposal is concerned to change any rates.

A. There isn't any proposal to change any rates within Wisconsin; but I rather think that the docks may participate affirmatively in this case; that is, in connection with your last statement that they might have no interest.

Q. But if there is a remote issue, or a direct influence of the dock rates in such points as Beloit, and Rockford being close to Beloit, the effect of those rates would be felt at Rockford; the effect of the low rates from the docks to Beloit would be felt at Rockford?

A. I doubt that, because the docks do not have any rate to Rockford, Illinois, now. That is the subject of a formal compliant that was just filed the other day.

Q. And what you mean is they would not ship coal down to Beloit and then truck it down to Rockford, or anything of that kind?

A. That is right; because they do not ship any to Beloit.

Exam. Trezise: All right; thank you. That makes it a [fol. 1107] little bit clearer to the Examiner. Have you some questions, Mr. Morgan?

Mr. Morgan: I have a series of questions.

Exam. Trezise: Before you examine, would you rather have this other witness go ahead?

Mr. Morgan: The only point I raised, it is a question of the Examiner's deciding where convenience rests more heavily. This witness will take up more than the morning.

Exam. Trezise: How long will you take, Mr. Dixon?

Mr. Dixon: An hour and a half on direct.

Exam. Trezise: Off the record.

(Discussion outside of the record.)

Exam. Trezise: Go ahead, Mr. Morgan.

Mr. Morgan: You mean to go ahead with this witness?

Exam. Trezise: Yes; go ahead with your examination, and we will reserve about fifteen minutes for the Southern. Off the record.

(Discussion outside of the record.)

Mr. Boden: Could I have about two questions?

Exam. Trezise: Go ahead.

By Mr. Boden:

Q. In Wisconsin state rates, the equalization of the docks is not applicable in all of their distances, are they?

The Witness: A. No.

Q. That is, the short haul, there is no equalization regardless of the amount?

[fol. 1108] A. You mean the short haul from the nearest dock?

Q. To approximately 40 of 50 miles from the nearest dock.

A. Within that short distance, no; that is a carry-over from the old adjustment.

Q. In speaking of the equalization of docks at Janesville, does Green Bay have the same rate now as Milwaukee to Janesville or Beloit?

A. No.

Mr. Boden: That is all.

Mr. Bather: I have a few questions.

Exam. Trezise: All right, Mr. Bather.

By Mr. Bather:

Q. On page 2 of your prepared statement you referred to the decision, the original decision of the Commission in the Fairbanks-Morse case, in which the Commission found that the rate to Beloit should not exceed the rate to Rockford by more than 25 cents; now, you did publish, did you not, rates from Southern Illinois and the other groups on that basis by reducing the rate Southern Illinois to Beloit to $2.25?

A. That is right.

Q. On the same page you assume that had the carriers complied with the order, as they are attempting to do in these proceedings, the rate to Rockford could have been increased to $2.50?

A. That is right.

Q. That is purely an assumption; you don't know whether the Commission would have approved that rate?

[fol. 1109] A. I have no idea what the Commission would do; all I stated is what could have been done by the railroads.

Q. That is what you assume could be?

A. No, it could be done, always subject to suspension.

Q. But it was not done?

A. No.

Mr. Bather: That is all.

Exam. Trezise: We will excuse Mr. Flansburg, subject to cross-examination.

Mr. Morgan: The witness will be available?—I stated that I would have an hour or more just on preliminary; I have only seen the exhibits; I assume the witness will therefore be subject to recall at a convenient time in the hearing. What I meant, when it was convenient during the procedure, or the hearing. There are several witnesses some of the gentlemen desire to put on; and the middle of the week, or towards the end of the week probably,——

The Witness: As far as I know, I will be here all next week.

Exam. Trezise: All right; with that understanding,——

Mr. Wilkinson: May I ask just one question?

Exam. Trezise: Mr. Wilkinson?

By Mr. Wilkinson:

Q. This distance of 370 miles from Southern Illinois to Beloit which you show in your evidence, is that the distance that was referred to in the Fairbanks-Morse case?

[fol. 1110] The Witness: A. Yes.

Q. That is not a distance that is shown in the record here?

A. No.

Mr. Wilkinson: Thank you.

(Witness withdrawn.)

Mr. Dixon: Mr. Examiner, may we have a few minutes recess, to get these exhibits distributed.

Exam. Trezise: All right; have a short recess.

(A short recess was taken.)

(Respondents' Exhibit 17, Witness Dilli, marked for identification.)

Exam. Trezise: All right, gentlemen; when you are ready.

Carl W. Dilli, was sworn and testified as follows:

Direct examination.

By Mr. Dixon:

Q. Will you state your name and connection with the Southern Railway Company.

A. My name is Carl W. Dilli; I am assistant to the freight traffic manager of the Southern Railway System, Washing-

ton, D. C. I have been employed by the Southern Railway System for the past twenty-five years, the principal part of that time in the handling of freight rates and other related matters.

Exam. Trezise: Is this the statement that you said you would put into the record today?

Mr. Dixon: Yes, I would like to put it into the record——

[fol. 1111] Mr. Morgan: The only point I am interested in is reserving the rights of objection and motions, following the reading of it in the record.

Exam. Trezise: Well, Mr. Dilli will be here next week.

Mr. Dixon: No, not next week, Mr. Examiner. I would like to have it understood that he will be here at the subsequent hearing.

Exam. Trezise: I think that will be satisfactory. Any objection to that? (No response.) Very well; then it will be understood that Mr. Dilli will be at the subsequent hearing, which seems to be necessary at this time that we will have to have at a later date, a subsequent hearing to complete the testimony.

Now, if you will introduce your exhibits, I believe that will be complete.

Mr. Dixon: Yes, I would like to.

Exam. Trezise: Exhibit No. 17 is received.

(Respondents' Exhibit No. 17, Witness Dilli, received in evidence.)

Exam. Trezise: What is that exhibit?—You might just mention what it is.

The Witness: A. Mr. Examiner, on the first and second page there are twenty-five numbered lines showing what it is. In a general way, it is a statement of the present and proposed rate, and some maps and exhibits, things of that kind——

[fol. 1112] Mr. Dixon: Then we will proceed, and put in the statement:

By Mr. Dixon:

Q. Have you studied the matters here involved with a view of testifying here today?

A. I have.

Q. You have some exhibits numbered 17, to file in this proceeding?

A. Yes.

Q. Were those exhibits prepared under your supervision or direction?

A. They were.

Q. Are they true and correct to the best of your knowledge?

A. They are.

Q. Give a general description of southern Railway Lines, particularly in Illinois and Indiana.

A. The Southern Railway System radiates all over Southern territory, covering thirteen states and the District of Columbia. As to Illinois and Indiana in particular, the Southern Railway operates a main line of railway north of the Ohio River extending from Louisville, Kentucky through Southern Indiana and Illinois to East St. Louis, Illinois. St. Louis, Missouri is reached through the Terminal Company at that point. There are several branch lines radiating from Huntingburg, Indiana, one to the northeast extending to French Lick, Indiana, and three south of Huntingburg extending to Cannelton, Rockport and Evans-[fol. 1113] ville, Indiana. The particular origin territory involved in this proceeding, that is, the territory serving coal mines, is on the main line in the neighborhood of Princeton, Indiana, a point 113 miles west of Louisville; Boonville, Indiana, a point 31 miles south and west of Huntingburg, Indiana; and Belleville, Illinois, a point on the main line 14 miles east of East St. Louis. Those points are representative of the mine groups, familiarly known as Princeton-Ayrshire, Boonville and Belleville.

The Southern Railway does not serve any part of the destination territory involved in this proceeding.

Q. What is the most important tonnage on the line of the Southern Railway in Illinois and Indiana you have just described?

A. The Line is one of comparatively light traffic density as compared with other main lines of the Southern Railway System. It originates very little tonnage with the exception of coal. It does originate a substantial quantity of coal. With the exception of Louisville and St. Louis, there are few populous cities located on this line, which, of course, has a tendency to reduce its traffic density. The coal tonnage is a very important tonnage to this line, contributing largely to its maintenance.

Q. Aside from the Princeton, Boonville and Belleville groups, does the Southern Railway serve any other mine groups involved in this proceeding?

A. No, it does not.

[fol. 1114] Q. As to the Belleville, Illinois Group in so far as the Southern Railway is concerned, is it presently producing coal in any substantial volume?

A. No, it is not.

Q. Explain the interest of the Southern Railway in this proceeding.

A. Our immediate interest in this proceeding is the disruption that has been proposed between the Princeton-Boonville groups and other groups. Specifically, I have reference to the differential as between Princeton and Boonville groups, on the one hand, and the Linton-Sullivan group on the other hand and the Princeton and Boonville groups versus Southern Illinois. I shall explain that in more detail later on when I show the situation in exhibit form. I might add here that we are not so much concerned with the inherent rate level as we are in the question of the differentials.

Q. In other words, you want to maintain the present relationship as between mines on the Southern Railway and those in the Linton-Sullivan group which has been in effect for many years?

A. That is correct.

Q. Before dealing with the exhibits that you have prepared for this case, I would like to ask you if the question of differentials as between the Princeton and Boonville groups on the one hand and the Linton-Sullivan group on the other hand has heretofore been given consideration by [fol. 1115] the Interstate Commerce Commission?

A. The Interstate Commerce Commission has given consideration to this question, the latest decision being that in I&S Docket 4362, decided April 10, 1939, reported at 232 ICC 151 finding 2 of that decision as shown on page 170 of the report, found not justified a differential in excess of 7 cents, Princeton over Linton-Sullivan and 3 cents Boonville over Princeton. At page 167 of the same report, a Commission refers to the fact that in the Illinois Coal Traffic Bureau Case, reported at 204 ICC 225, the same question was there before them.

Q. I believe you are now ready to proceed with filing your exhibit 17 consisting of 25 pages. Will you take up that exhibit and explain the pages as you go along?

A. Page 1 is a map showing the various mine groups that make up the so-called Illinois-Indiana Coal Fields. Shown in red is the Princeton Group. The Boonville Group is shown in green. These are the groups in which the Southern Railway is particularly interested. Our belief is that should differentials greater than those approved in I&S 4368 be made effective, it would result in freezing out these mine groups to the territory here involved.

The base group for the present rates to the territory here involved is Southern Illinois.

From the Springfield and Brazil-Clinton Groups the rates are 30 cents under Southern Illinois.

[fol. 1116] From the Linton-Sullivan Group, the rates are 10 cents over Brazil-Clinton.

The Princeton Group is 7 cents over Linton-Sullivan and Boonville is 3 cents over Princeton, or 10 cents over Linton-Sullivan.

The above basis would result in rates from Princeton being 13 cents under Southern Illinois.

Page 2 is a map of the several carriers serving the destination territory here involved, shown by the several different colors. The starting point and the stopping point to which rates are under suspension commences and ends with the color designating the line of the several carriers. Illustrative of this is the Chicago and Great Western, shown by the brown coloring as commencing at St. Charles and ending at South Freeport.

Page 3 is a chronological statement of rates on coal from mines in the Brazil-Clinton; Linton-Sullivan; Princeton-Ayrshire and Boonville Groups to Beloit, Wisconsin and Rockford, Illinois. By referring to the columns under the heading, "Differentials" as to Beloit, it will be noted that during the majority of the time for the period April 1, 1913 through the present that the differential Princeton over Linton-Sullivan has been 7 cents per net ton. Where the differential has been in excess of 7 cents that was brought about by reason of the advance under Ex Parte 74 and reduced rates of 1922, however the normal differentials were later restored. As to the differential of 3 cents, Boonville [fol. 1117] over Princeton, it has been in effect since May, 1919. The latter adjustment was sponsored by the South-

ern Railway to enable our operators in the Boonville Group to more nearly compete with other mine groups in this territory. Prior to that time there was little if any movement from Boonville. What has been said with respect to Beloit is generally true as to Rockford, Illinois.

It will be observed that opposite the suspended rates shown at the bottom of the page we have shown by a symbol @ was not published for account of the Southern Railway. As previously explained, the Southern Railway did not publish the same rate from Princeton as here under suspension for account of other lines in the Princeton Group. Had we done so the spread in the rate Princeton over Linton would have been the difference between a single line rate of $2.20 from Linton and $2.39 from Princeton, or 19 cents, whereas we now have and have always contended that the differential should not be in excess of 7 cents. To have increased the differential from 7 to 19 cents would have been contrary to what the Interstate Commerce Commission found a proper differential in I&S Docket 4368. With a spread of 19 cents Princeton over Linton, it would, we believe be impossible for our operators to compete with mines to the north.

Pages 4 to 6 show the present and suspended rates as published by the individual lines serving the Linton-Sullivan Group and the individual lines serving the Princeton [fol. 1118] Ayshire Group to the destinations shown. The selected origin carriers are representative ones in the groups. Also shown are the differences Princeton-Ayrshire over or under the Linton-Sullivan groups as the case may be. Here again we have also shown the difference as between the carriers serving the Princeton-Ayrshire Group and those serving the Linton-Sullivan Group.

Page 4 covers destinations on the Milwaukee. Page 5 covers destinations on the North Western, and Page 6 covers destinations on the Illinois Central and Chicago Great Western.

Page 7 is a statement of rates on coal from mines on the several lines that go to make up the Linton-Sullivan and Princeton-Ayrshire Groups to representative points involved, with the differentials Prince-Ayrshire over Linton-Sullivan. It will be noted that the rates from C. M. St. P. & P. and Illinois Central mines have been shown in different columns than the rates from mines on other lines that make up the Linton-Sullivan Group. Likewise it will be noted

that we have shown opposite the destinations, rates for the different carriers serving the destination points.

The reason for showing the rates separately from C. M. St. P. & P. and Illinois Central, as well as rates on the several lines at the destination points, is because the carriers that serve the origin groups and the destination points have different rates from carriers serving the mine groups and not reaching the destination point. To illustrate, the [fol. 1119] C. M. St. P. & P. has mines located in the Linton Group and likewise reach Rockford, Illinois. The present rate to Rockford for the single line haul of the C. M. St. P. & P. is $1.90. The suspended rate is $2.05. The rate from C. M. St. P. & P. mines in connection with the Illinois Central or C. & N. W. is $2.02 at present and $2.17 under the suspended basis. The Illinois Central also has mines in the Linton Group and likewise serve Rockford, Illinois. The rate via the direct route of the Illinois Central is the same as the C. M. St. P. & P. rate, or $1.90 at present and $2.05 suspended. The rate from Illinois Central mines to Rockford C. M. St. P. & P. or C. & N. W. delivery is $2.02 at present and $2.17 under the suspended basis.

Thus it will be seen that where a carrier serves both the origin and destination we have single line rates. In the case of carriers not serving the mine group joint rates apply, which are higher than the single line rates. What is true in respect to Rockford is generally true in respect to other destinations that are reached by carriers also serving the mine groups.

At this time I would like to make this further observation:

The Milwaukee has mines located on its lines just east of of Elnora, Indiana, in the direction of Bedford, Indiana. These mines are immediately north and in close proximity to mines in the Princeton Group, as can be readily seen by the map numbered page 1 of this exhibit.

This Commission at page 168 of its decision in I & S [fol. 1120] Docket 4368, 232 ICC 151, referred to the fact that the Milwaukee did not propose to increase the then existing differential from these mines of 7 cents over Linton-Sullivan and went on to state that there was no sufficient reason why these mines should not continue to take the same differential as was established from the Princeton Group as a result of its findings in that case.

The Milwaukee's Tariff ICC B-7246 under Item 1 provides for a differential of 7 cents over rates from the Linton

Group to all stations on the Milwaukee and a number of its short-line connections.

Under the revision that was suspended resulting in the proceedings now at hand, the Milwaukee did not increase the differential from these mines so that the situation in respect to mines in the Princeton Group of the Southern Railway to Beloit, Wisconsin, is no different than that from the mines on the Milwaukee east of Elnora.

Pages 8, 9 and 10 show the present and suspended rates as published by the individual lines serving the Southern Illinois Group and the Princeton-Ayrshire Group. The selected carriers are representative ones in the groups. Also shown are the differences Princeton-Ayrshire over or under the Linton-Sullivan Group as the case may be. Also shown is the difference in rates as between the carriers serving the Princeton-Ayrshire Group and those serving the Southern Illinois Group.

[fol. 1121] Page 11 is a statement of rates on coal from the Linton-Sullivan and Princeton-Ayrshire groups, with the differential Princeton-Ayrshire over Linton-Sullivan, to points in Wisconsin, Illinois and Iowa. The first and last blocks of figures are points of destination in Wisconsin, Illinois, and Iowa not involved in this proceeding but in contiguous territories. The middle block of figures, that is the block commencing with Beloit, Wisconsin, and ending with Geneva, Illinois, is a list of representative points to which rates are under suspension in this proceeding.

Here again it should be explained that while the exhibit does not so indicate, the Southern Railway did not publish the rate from Princeton to Beloit of $2.39, here under suspension for account of other lines. To do so would have meant a spread of 19 cents as between Princeton on the one hand and Linton-Sullivan on the other. This spread is the difference between the rate of $2.20 under suspension from Linton-Sullivan, applicable for single-line hauls, that is, carriers serving both the mine group and the destination point, and the suspended rate of $2.39 from Princeton.

It will be noted from the exhibit that with few exceptions the differential to destinations not involved in this proceeding, but adjacent thereto—that is to say, those in the first and last blocks of the exhibit—is 7 cents Princeton over Linton-Sullivan; whereas to destinations involved in this [fol. 1122] case, as shown in the middle block of figures, the differentials range from 4 to 19 cents. The differentials to

the destinations involved in this case that are in excess of 7 cents is brought about by reason of the fact that there are two lines of rates in effect from the same mine group to the same destination. That is so because from the Linton-Sullivan group there is in effect both single-line rates and joint-line rates—that is to say, there are rates in effect where the same railroad serves both the origin mine group and the destination. Illustrative of this is the case of Rockford, Illinois. The rate from Linton-Sullivan for single-line hauls is $1.90, where as the rate from Princeton is $2.09, resulting in a differential of 19 cents. The joint-line rate from Linton-Sullivan is $2.02 with a rate from Princeton of $2.09, or a spread of 7 cents.

Page 12 is a chart showing representative destinations to which the rates are under suspension and points adjacent thereto, with the present and suspended differentials Princeton over Linton-Sullivan.

The destinations to which the rates are under suspension are shown in red, and the adjacent points to which the rates are not here involved are shown in green.

The present differentials are shown under the capital letter "P", and the suspended differentials are shown opposite the capital letter "S". Where two numbers are shown opposite the letters "P" and "S", it means that the differ- [fol. 1123] ential differs depending on the mines served by particular railroads. For example, to Rockford, Illinois opposite the capital letter "P" is shown the number 7 which means that the present differential Princeton over Linton is 7 cents. Opposite the capital letter "S", the figures 7 and 19 appear which mean that the rates under suspension from Princeton range from 7 to 19 cents over the rates from Linton.

Here again as to Beloit, we have not shown that the differential Princeton over Linton would be 19 cents had the Southern Railway published the suspended rate of $2.39. What has been shown is the spread in the rates in so far as Southern Railway is concerned.

The purpose of the exhibit is to show in a geographical way that the territory involved in this proceeding is completely surrounded by points in territories to which the differentials are substantially less than those under the suspended basis, and to bring into view the consumer interest that may be affected by the proposal. By consumer

interest, I mean the consumer interest that was referred to in the Commission's Decision in 204 ICC 225-240.

Pages 13, 14, and 15 show the rates to points in Illinois, Wisconsin and Iowa not involved in this proceeding from Southern Illinois, Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire, and the Boonville Groups to destinations having a population of 5,000 or more. In addition to the [fol. 1124] present rates, the statements also show the differences Princeton under or over Southern Illinois and the differential Princeton over Linton and Boonville over Princeton.

As to Illinois, the selected destinations are generally located in Northern Illinois. The statement was confined to that territory by reason of the fact that to the other section of Illinois rates are not provided from mines in the Princeton-Boonville Groups. As to Wisconsin and Iowa, I think it is safe to say that the statements include practically all points having a population of 5,000 or more. A review of these pages, that is, 13 to 15 clearly shows that, with few exceptions, the differentials Princeton over Linton and Boonville over Princeton are 7 and 3 cents respectively. Thus it is apparent that most of the territory to which rates are under suspension are completely surrounded by destinations where the spread Princeton over Linton is 7 cents.

Pages 16 to 23, inclusive, show in chronological order the rates just prior to those suspended by I&S 4368; rates that were published but suspended in I&S 4368; rates approved by the Commission as a result of formal hearing of I&S 4368; the rates that became effective November 15, 1937 as a result of Ex Parte 115, which rates are still in effect; and the rates under suspension in the instant case. The rates shown on these pages are to selected representative destinations. A review of the rates published to become effective August 2, 1942, shown opposite Lines 21 to 25, [fol. 1125] inclusive, but suspended by I&S 5139, reveals that such rates were not published in accordance with the findings of the Commission in I&S 4368, in that, in most instances the differential as between Southern Illinois and Linton versus Princeton are different from those resulting from rates found proper in I&S 4368.

While the exhibits speak for themselves, it is perhaps well if I explain somewhat further in detail.

Taking page 16 which covers the destination of Beloit, Wisconsin, it will be noted that I have shown the rates

published by the different carriers going to make up the several groups indicated on the exhibit, and the difference as between Princeton, on the one hand, and Southern Illinois and Linton on the other. Taking the first block of figures, that is, the rates in effect prior to I&S 4368, it will be noted that Princeton was 13 cents under Southern Illinois, and 7 cents higher than Linton.

The suspended schedules under I&S 4368 shown opposite lines 6 to 10, provided no difference as between Southern Illinois and Princeton, while from Linton the suspended schedules would have increased the differential from 7 cents to 20 cents, which, of course, would have worked to the detriment of the mines located in the Princeton group in that their advantage of 13 cents as compared with Southern Illinois would have been completely extinguished, while the advantage that Linton would have enjoyed would have [fol. 1126] been increased from 7 cents to 20 cents.

In the third bracket of figures, covered by Lines 11 to 15, are shown the rates approved by the Commission to I&S 4368. It will be noted here that the differences as between Princeton, on the one hand and Southern Illinois and Linton on the other hand, were the same as those in effect prior to I&S 4368.

As to the rates that became effective November 15, 1937 and presently in effect, the only difference is the increase authorized by the Commission in Ex Parte 115, which, of course, makes no change in the differentials as of the present versus that of prior to I&S 4368.

Coming now to the schedules under suspension in the instant proceeding, which are covered by the last block of figures, Lines 21 to 25, we find that there has been a material disruption of the differentials. Whereas the difference Princeton under Southern Illinois has all along been 13 cents, it is now proposed to make that difference 1 cent and 13 cents, respectively. These latter figures are brought about by the fact that the Milwaukee proposed no change from Linton, while other lines serving the Linton Group, that is, C. & E. I., Illinois Central and New York Central propose to increase the rate from $2.20 to $2.32.

As to the Princeton-Ayrshire Group under the suspended schedules, it is true that the lines serving the Princeton Group other than Southern Railway published rates that [fol. 1127] would reflect the usual differential of 7 cents

Princeton over Linton, but in doing so they actually increased their spread 19 cents because the Milwaukee proposed no change in their existing rate from Linton of $2.20.

As to rates from the Princeton Group of the Southern Railway we declined to establish the proposed rate of $2.39, for to have done so would have resulted in increasing our rate from $2.27 to $2.39 as compared with that published by the Milwaukee from the Linton Group of $2.20, or 19 cents.

While it is true that to many of the points here involved we have in the past participated in rates reflecting a greater differential than 7 cents Princeton over Linton, that does not justify our continuing to do so, nor does it justify a continual spreading of such situation, and we feel that this is the proper time for readjustment in the rates so that Princeton shall not exceed Linton by more than 7 cents.

Page 24 shows tariffs that have been used to determine the rates shown in preceding pages of the exhibit.

Page 25 contains a list of excerpts from decisions of the Interstate Commerce Commission in which it has been held that a group adjustment of long standing should not be disturbed except upon a very clear and convincing showing of its unlawfulness. The exhibit is filed as information. To this list should be added the decision of the Interstate Commerce Commission in I&S Docket 4368.

[fol. 1128] Q. From the study you have made of this case and your familiarity with other coal rate adjustments and movements, what effect, if any, would a disruption in the differential relationships have upon the tonnage from mines served by the Southern Railway here involved?

A. As previously pointed out in so far as the rates from mine groups on the Southern Railway, that is, Princeton & Boonville to Beloit, are concerned, there has been no change. In other words, Southern Railway did not make the same change as was made by certain other lines serving the Princeton group. However, we do feel that should the differential of 7 cents, Princeton over the Linton-Sullivan group, be increased to 19 cents, that it would result in a shift on tonnage to mines more favorably treated. It is well here to state that should the differential to the territory here involved be increased, it undoubtedly would ultimately result in increasing the differential to points in other territories where there is a very substantial movement from our

mines. Should that occur, the ultimate result, in my opinion, would be a substantial diminution in the operations at our mines. In addition we desire to maintain the existing differentials to the territories north and west of the territory here under consideration that otherwise may be affected should the differentials be readjusted as a result of this proceeding.

Q. Of course you cannot make any definite forecast as [fol. 1129] to what might happen, but that is your opinion?

A. That is correct.

Exam. Trezise: Is that all on direct?

Mr. Dixon: For today; yes, sir.

Exam. Trezise: Very well; you may be excused. We will adjourn to 10:00 o'clock Monday morning.

(Witness withdrawn.)

Exam. Trezise: 10:00 o'clock Monday morning.

(At 12:00 o'clock noon, June 19, 1943, adjournment until 10:00 o'clock a. m. Monday, June 21, 1943.)

[fol. 1130] Morrison Hotel, Chicago, Illinois,
June 21, 1943.

The hearing was resumed pursuant to adjournment, at 10:00 o'clock, a. m.

Before: R. N. Trezise, Examiner.

Present: W. C. Kaylor, Illinois Commerce Commission.

Appearances: As before.

Proceedings

Exam. Trezise: All right, gentlemen, when you are ready, let us continue.

Mr. Biaett: If the Examiner please, I will call Mr. O. E. Pearson.

O. E. Pearson was sworn and testified as follows:

Direct examination.

By Mr. Biaett:

Q. Will you state your name for the record, please.

A. O. E. Pearson.

Q. What is your position, Mr. Pearson?

A. Assistant superintendent of transportation, Chicago, Burlington & Quincy Railroad.

Q. What are your duties in that position?

[fol. 1131] A. Well, to look after the general movement of traffic.

Q. Are you familiar with the transportation of coal from the mines in Illinois served by the Burlington to points in Northern Illinois and also to points in Eastern Iowa?

A. I am.

Q. Are you familiar with the operating conditions surrounding the transportation of coal from the Illinois mines served by the Burlington to points in Northern Illinois and Eastern Iowa?

A. Yes, sir.

Q. At what points in Illinois does the Burlington serve coal mines?

A. We have two general districts, the Southern Illinois field and the so-called Fulton County field, which is in Central Illinois.

Q. Does the Burlington serve coal mines at other points in Illinois also?

A. We have a mine at Alpha, which is separated from that other district, a small mine, and there is also a mine at Rushville, Illinois, which is not in the Fulton County District.

Q. Does the Burlinton also serve the Centralia Group?

A. Yes, sir.

Q. In transporting coal to Northern Illinois, does the Burlington have a single-line haul from these mines to Rochelle, Rockford, Polo, Sterling, and Amboy?

A. I am not sure I understand your question about the [fol. 1132] single-line haul.

Q. On coal originated by the Burlington at these mines, can that coal be handled all the way through to destination via the Burlington to Rochelle, Illinois?

A. Yes, sir.

Q. And to Rockford, Illinois?

A. Yes, sir.

Q. And Polo, Illinois?

A. Yes, sir.

Q. And Sterling, Illinois?

A. Yes, sir.

Q. And Amboy, Illinois?

A. Yes, sir.

Q. Now, this coal from those mines served by the Burlington, can that also be handled by that carrier to Savanna, Illinois, Dubuque, Iowa, Clinton, Iowa, Davenport, Iowa, Moline and Rock Island, Illinois?

A. Yes, sir.

Q. Are you familiar with the assembling and gathering service in the Southern Illinois field on the Burlington?

A. I am.

Q. How many concentration points are there in that field on the Burlington?

A. We have four general concentration points in the Southern Illinois field. Do you want me to name them?

[fol. 1133] Q. Yes, will you name them, please.

A. Christopher, Herrin, Zeigler, and West Frankfort.

Q. Will you describe the assembling of coal from the mines to such concentration points, please.

A. The assembling is done by switch engines in each of the districts, who take the empties out to the mines and bring the loads back to these four concentration points.

Q. At what distance from these concentration points are the mines located?

A. Well, in the Christopher District there is an area seven and a half miles north and south by five miles east and west, with three mines in the district.

Herrin is an area of five miles north and south by three miles east and west. Zeigler is an area one and a half miles north and south by one mile east and west. West Frankfort is an area of three and a half miles north and south by five miles east and west.

Q. Now, after this coal is assembled at these concentration points, where does it next move?

A. It moves to Centralia.

Q. How is that operation performed?

A. We run turnaround trains from Centralia that take the empties down into the mine district and pick up the loads and take them back to Centralia.

Q. Will you describe the switching of the mines in the [fol. 1134] Centralia Group?

A. There are two mines there and they are served by the Centralia switch engine.

Q. And all coal from Southern Illinois and from the Centralia mine is brought into the Centralia yard, is that correct?

A. Right.

Q. What type of classification is made at Centralia?

A. They classify the coal that goes into the St. Louis District and any short-haul coal, that is all the switching out that is done at Centralia.

Q. On shipments destined to points in Northern Illinois or Eastern Iowa, where does the coal move from Centralia?

A. It moves to Galesburg, Illinois.

Q. In this connection, will you please describe the serving of the mine located at Rushville, Illinois?

A. Rushville is on a branch line out of Vermont, Illinois, and the coal is moved into Vermont on the regular freight train, the regular scheduled train. At Vermont it is picked up by these Galesburg coal runs from Centralia.

Q. Mr. Pearson, what type of power or locomotive is generally used from the Southern Illinois field to Galesburg?

A. It is the Santa Fe type locomotive, which we designate as an M-2, with a tractive effort of 81,600 pounds.

Q. What is the tonnage rating of that locomotive from Herrin or West Frankfort to Galesburg?

[fol. 1135] A. Approximately 6500 tons. They sometimes handle a little more than that, but we show it as 6500.

Q. Now, what is the ruling grade on the line from Herrin or West Frankfort to Galesburg, Illinois?

A. Three-tenths of one per cent, approximately.

Exam. Trezise: When you say the ruling grade, that question has come up several times, and you mean what?

The Witness: I mean the maximum grade that they have to contend with in moving the coal through that territory.

By Mr. Biaett:

Q. Now, Mr. Pearson, will you describe the assembling of coal in the Fulton County District?

A. The Fulton County mines are on two pieces of track there, from Yates City to Lewistown, and then a branch that runs from Lewistown to Fairview; and the coal from the Fairview branch is moved into Lewistown and turn-around trains from Galesburg operate to Lewistown bringing the empties into the mine field and taking the loads back to Galesburg.

Q. What types of locomotives are used in the Fulton County District?

A. We use the Santa Fe type M-2 engine with a tractive effort of 81,600 pounds, and—well, that is the principal engine that is used there.

Q. Well, what locomotive is used in gathering the coal from Lewistown?

A. Into Lewistown is what we term the O-3 engine, which [fol. 1136] has a tractive effort of 66,645 pounds.

Q. What is the tonnage rating of that locomotive on that particular gathering line?

A. About 2200 tons.

Q. Do you have the ruling grade on that line also?

A. Yes, sir, it is 1.65.

Q. Per cent?

A. Per cent.

Q. Now, from Lewistown to Yates City, what is the tonnage rating of the locomotives in general use?

A. That is the M-2 engine with a tonnage rating of 5800 tons.

Q. What is the ruling grade from Lewistown to Yates City?

A. .74 per cent.

Q. Now, from Yates City to Galesburg what is the tonnage rating of the M-2 locomotive?

A. 5,000 tons.

Q. And what is the ruling grade between those points?

A. 1.08 per cent.

Q. Now, will you describe how coal originating at Victoria is handled?

A. The coal comes to us at about five miles east of Galesburg, at a town called Wataga, and it is picked up there either by the local or some extra and taken into Galesburg for classification.

Q. Now, as I take it, Mr. Pearson, all of the coal from [fol. 1137] mines on the Burlington which you have named, moving to points in Northern Illinois and Eastern Iowa, *are* handled through Galesburg, is that correct?

A. That is right.

Q. Now, from Galesburg will you trace the movement of coal from any of these mines to Rochelle, Illinois?

A. The coal would move over our main line to Aurora, Illinois, and then over what we know as the Aurora-Savanna line back to Rochelle.

Q. And from Rochelle will you trace the movement to Rockford?

A. The trains start at Rochelle and they go to Flag Center, which is on the same line, and from there they go north on the branch to Rockford.

Q. Will you trace the movement of coal from Rochelle destined to Polo, Illinois?

A. It would continue on that line, the same Savanna branch line, to Polo.

Q. Now, Mr. Pearson, what is the locomotive generally used by the Burlington from Galesburg to Aurora?

A. Our largest locomotive is what is known as the O-5, with a tractive effort of 80,700 pounds and 6,000 tons rating. We do operate some other engines there.

Q. What other locomotives are used in that territory as a general rule—not the occasional ones, but the ones generally operated?

[fol. 1138] A. An O-3 engine with a tractive effort of 66,645 pounds and a tonnage rating of 5500 tons.

Q. Now, can you give us the ruling grade from Galesburg to Aurora?

A. .4 of one per cent.

Q. Now, from Aurora to Rochelle what type of locomotive is used in that service?

A. We use the O-5 type of engine with a tractive effort of 80,700 pounds, and a tonnage rating of 3300 tons; and we use the O-3 engine with a tractive effort of 66,645 pounds, a tonnage rating of 2750 tons.

Q. Would those ratings also apply on shipments moving from Aurora to Polo?

A. They would.

Q. Now, to Rockford from Flag Center what locomotives are used on that line?

A. We use what we know as the O-1-A engine, with a tractive effort of 58,090 pounds, tonnage rating of 2200 tons.

Q. Mr. Pearson, can you give us the ruling grade between Aurora and Savanna, which would include shipments moving to Rochelle and Polo?

A. .8 of one per cent.

Exam. Trezise: Mr. Biaett, do you think it would help the uninitiated if they had before them Exhibit No. 6 introduced by Mr. Robertson to guide them in the testimony [fol. 1139] that is being given?

Mr. Biaett: I think it would be very helpful. The witness is testifying from that exhibit, and I am questioning him from that exhibit.

By Mr. Biaett:

Q. Now, on shipments of coal from Galesburg to Sterling and Amboy, will you describe the movement to those points?

A. That coal would move on our line north from Galesburg to Denrock and over the branch line to Sterling and Amboy.

Q. What type of power is commonly used on that line, Mr. Pearson?

A. We use the O-1-A engine with a tractive effort of 58,090 pounds, tonnage rating 2250 tons, and we also use the O-5 engine, tractive effort of 80,700 pounds, tonnage rating of 3200 tons.

Q. Now, will you describe the movement from Galesburg of shipments of coal destined to Moline, Rock Island or Davenport?

A. They move on that line north from Galesburg to Barstow, and then they are usually handled by switching power or other trains that move over from Barstow to what we call the Tri-City District, Rock Island, Moline and Davenport.

Q. Is there a rating on that switching power?

A. No, I haven't any rating on that.

Q. Now, from Galesburg to Clinton, Iowa, will you trace that movement from the point at which you last stopped and which I believe is Denrock?

A. It moves over the line, the Savanna line, and switches [fol. 1140] off at a point known as Lass, where it goes over across the river to Clinton.

Q. What locomotives are used on that line, Mr. Pearson?

A. We use two types of power, the O-3 engine with a tractive effort of 66,645 pounds, tonnage rating of 7,000 tons, and the M-2 engine with a tractive effort of 81,600 pounds and tonnage rating of 7500 tons.

Q. Now, from Lass to Savanna are those same locomotives in common use?

A. That is right.

Q. Would their tonnage ratings be the same?

A. Approximately the same.

Q. From Savanna to Dubuque what type of power is commonly used by the Burlington?

A. We use the O-1-A type with a tractive effort of 58,099 pounds and a tonnage rating of 6000 tons; and the O-5 engine, tractive effort of 80,700 pounds, tonnage rating 7500 tons.

Q. What is the ruling grade from Galesburg to Savanna?

A. .9 of one per cent.

Q. And from Savanna to Dubuque?

A. Well, there is no ruling grade there. It is along the river.

Q. What is the ruling grade from Denrock to Sterling and Amboy?

A. .46 of one per cent.

Q. Now, from Flag Center to Rockford, did you give that ruling grade?

[fol. 1141] A. That is .6 of one per cent.

Q. Now, I believe you stated the Burlington also served a mine at Alpha, Illinois?

A. Yes, sir.

Q. Will you trace the movement of coal from Alpha to Sterling, Amboy, Polo, Rockford and Rochelle?

A. It would be picked up by northbound trains from Galesburg. Alpha is just north of Galesburg on our Savanna line, and it would be taken up to Denrock and get into the same run as the other coal.

Q. And it would move in the same manner to the towns in Northern Illinois and the towns in Eastern Iowa?

A. Correct.

Q. Now, coal which comes to the Burlington at Peoria, how would that move?

A. It would move into Galesburg the same as the Fulton County coal.

Q. And from there the movement would be the same as from Southern Illinois, Fulton County, and the other points?

A. Yes, sir.

Q. Mr. Pearson, taking the transportation of coal and the operating conditions on the Burlington, how do the operating conditions from the Illinois mines served by the Burlington, moving to Rochelle, Rockford, Polo, Sterling and Amboy, compare with the operating conditions from Illinois mines on the Burlington moving to Moline, Rock

[fol. 1142] Island, Davenport, Clinton, Savanna and Dubuque?

A. They would be very similar. We have a heavier volume of traffic in along the river, which might reduce the expense a little.

Mr. Biaett: That is all I have.

Exam. Trezise: Well, Mr. Pearson, the state commerce there, within the state, and that to an interstate point, that is a point outside of the state—and 99 per cent of the movement is in Illinois, isn't it, more than that perhaps?

The Witness: I haven't the percentages, but it would be largely that.

Exam. Trezise: It is substantially all in Illinois, that is, the movement to Iowa destinations substantially, the whole movement is in Illinois; that is the point I am making.

The Witness: That is right.

Exam. Trezise: Do we have some questions?

Cross-examination.

By Mr. Cardy:

Q. Mr. Pearson, all of this traffic to Iowa moves to the Mississippi River, doesn't it?

A. I didn't get that.

Q. All of the traffic you have been discussing going to Iowa points moves across the Mississippi River?

A. Yes, that is right.

Q. Now, have you encountered any transportation con-[fol. 1143] ditions on moving that coal over the Mississippi River which you do not encounter in the movement of state traffic to a point, we will say, like, well, similarly situated in Illinois? What difficulties have you in going or in moving your traffic over the Mississippi River which you haven't in Illinois?

A. Well, you would have to cross the bridge, which doesn't present any particular difficulty.

Q. Is there any bridge charge, or what is the expense you have incident to making a river crossing on interstate traffic that you haven't on Illinois traffic? Can you give us any information on that?

A. I don't know that I can answer you definitely. So far as I know, there is no charge. I think we own the

bridges. I don't think there is any charge. I can't answer that.

Q. In other words, you haven't any information as to that?

A. No, I can't answer that.

Exam. Trezise: Any further questions?

By Mr. Vesey:

Q. As an expert, would you say it is more expensive——

Mr. Biaett: I object. The witness hasn't been qualified as an expert.

Mr. Vesey: May I finish my question?

Exam. Trezise: I didn't hear what you said there.

Mr. Vesey: I got three words out.

Exam. Trezise: I got only two of them.

[fol. 1144] By Mr. Vesey:

Q. As an expert, could you tell us whether or not it is more expensive for a railroad to move freight across a natural barrier, such as the Mississippi River, than it is to move it across ordinary terrain?

Exam. Trezise: Now, the question arises, is he an expert at that thing? You didn't mean to charge him with being an expert at cost figures?

Mr. Vesey: I presumed Mr. Biaett called him an expert witness to tell us about operating conditions.

Exam. Trezise: Yes, but not as to the costs. If you want him to answer, go ahead. Tell him about the cost.

Mr. Vesey: Certainly. I am just seeking information.

Mr. Biaett: I object to the question as it is now put. The witness isn't qualified to answer.

Mr. Vesey: You mean he is not an expert?

Mr. Biaett: Well now——

Exam. Trezise: I don't believe you need to answer that. You charged him with being an expert. He didn't say he was an expert. Do you have some other questions?

By Mr. Vesey:

Q. All right. As an operating man, pure and simple, is there any substantial difference in operating conditions in the movement of coal from Fulton County, Illinois, across

into Iowa, as against the movement of that same coal to a point such as Rochelle?

A. I don't think that there would be a great deal of difference.

[fol. 1145] Q. What is that?

A. I say, I do not think there would be a great difference.

Q. And in answering that question, I assume that you base it on the thought that once the roadbeds and the like have been established, it is from then on that you are making your appraisal, is that right?

A. That is right.

Q. In other words, you are not indicating or implying that the original cost to the line of construction of roadbed would make a difference?

Exam. Trezise: Do you want to go with him on that? If you don't, tell him so.

The Witness: I can't answer as to the original cost. After the bridge is in, I don't think it costs any more to haul across the river than along our line.

By Mr. Vesey:

Q. And it is on that basis you have been answering the questions?

A. That is right.

Q. Now, when you said there was no ruling grade from Savanna to Dubuque, what do you mean?

A. I mean that there is practically a level line.

Q. Practically a level line?

A. Yes.

Q. Now, generally speaking, as I understood your testimony, the coals which you pick up in Fulton County in effect [fol. 1146] are brought right into your trainloads of coal coming from your Centralia classification yards from Southern Illinois mines going into this territory?

A. That is right.

Q. So that in so far as Fulton County coals are concerned, looking at it from an operating point of view, you have virtually the same operating conditions as you have on the Southern Illinois coals?

A. That is right.

Q. In other words, there is not such a difference as you, as an expert operating man, could distinguish between the two?

A. You are talking about after the coal is at Galesburg, as I understand?

Q. That is right.

A. I don't see any difference.

Q. Now, I notice that you didn't give the ruling grade on your pickup service on Southern Illinois coals, nor did you specify, except in the case of Christopher, the number of mines served in each of the other three territorial points.

A. I haven't got with me the grade figures from the mines into these concentration points. I can give you the names of the other mines, if you wish them.

Q. Well, you said there were three mines at Christopher?

A. Three at Christopher.

Q. How many at Herrin?

[fol. 1147] A. Three at Herrin.

Q. How many at Zeigler?

A. There are two mines at Zeigler.

Q. How many at West Frankfort?

A. There are five mines.

Q. Now, you say you don't have the ruling grade there?

A. Not from the mines into the assembly point.

Q. I take it, there wasn't sufficient difference between the ruling grades on your Southern Illinois pickups as against your Fulton County pickups to even arouse your curiosity to make a comparison, is that correct?

Mr. Biaett: I object to the question. If he wants to ask a question, that is perfectly all right.

Mr. Vesey: If the examiner please, he said he didn't have that information. Now I ask him whether there wasn't evidently not enough difference in there to arouse his curiosity to make a comparison, as an operating man.

Exam. Trezise: I think the question is all right, if the witness can answer it.

The Witness: Of course, the territory you are speaking of is the territory that is served by the switching power there and it is just the gathering service in the field, and I don't think it is necessary to take into account very much the grades.

By Mr. Vesey:

Q. Exactly. In other words, looking at the thing as a whole, comparing, let us say, Fulton County as against

[fol. 1148] Southern Illinois, you as an operating man didn't feel that there was anything of sufficient significance to warrant your going to the trouble of looking up the ruling grades moving from the mine to your concentration points, did you, in Southern Illinois?

A. I would say the pickup service wouldn't be of so much difference. I think I did testify that the grades over in the Fulton County District are a little heavier than from the Herrin field to Galesburg.

Q. Now, tell me something about running a railroad. Let me ask you this: as I understand it, on a railroad you have got two things, the cost of moving a train after it has been loaded; and secondly, your terminal charges incident to the assembly of that train at your terminal points. Those are your two principal costs, is that right?

A. I would think so.

Q. Now, when it gets on to a railroad track, it doesn't cost any more to pull 50,000 pounds of one kind of coal than it does to pull 50,000 pounds of another kind of coal?

A. Not on the same piece of track.

Q. So if we are moving coal over the same piece of track from two different fields, the cardinal point is the terminal charges incident to transportation of coal from one field or another, is that right?

A. If I understand your question, I think "yes" is the answer.

[fol. 1149] Mr. Vesey: That is all.

Mr. Cardy: Mr. Examiner, I move to strike out the last answer Mr. Pearson made to Mr. Biaett's question, namely, that there was no substantial difference in the movement of traffic to these points in Iowa as compared to the points in Illinois, for the reason he didn't submit any testimony concerning coal movement over the Mississippi River. In other words, I don't want that statement to go without any scintilla of evidence showing the difficulties he might have in handling the coal across the Mississippi and making deliveries to these Iowa points. I make that as a motion.

Mr. Wood: I join in that motion. I urge that it be sustained for the reason——

Mr. Cardy: I might say that it is a mere conclusion of the witness, not based upon any facts of record.

Exam. Trezise: Mr. Wood.

Mr. Wood: The attorney and the witness both disavow any expert rule of costs, and it would be obviously impossible for him to make such a comparison as he has made in answering this last question, without knowing that.

Exam. Trezise: Well, Mr. Pearson, your locomotive tractive effort and your tonnage ratings that you have testified about here, neither one would be varied to any substantial extent by the hauling of the shipments across this river, is that true?

The Witness: Yes, sir.

[fol. 1150] Exam. Trezise: And so far as the costs of hauling it here, there or elsewhere is concerned, you have given no information, have you?

The Witness: No, sir.

Exam. Trezise: You did not appear here to give cost figures, did you?

The Witness: No, sir.

Exam. Trezise: Well, with that in view, you have his testimony, and nobody could be prejudiced with that answer. We will let it stand with the understanding that has been given by the answers to the Examiner's questions.

Mr. Wood: I withdraw my objection.

Exam. Trezise: Are there any further questions?

Mr. Stadell: I have a few questions I would like to ask Mr. Pearson.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. You stated that the coal from the Southern Illinois mines after having been assembled and brought into the four concentration points was then taken over to the Centralia yard?

A. That is right.

Q. And at the Centralia yard the only service you performed there, as I understood you, was to switch out the coal for St. Louis or other points west of Centralia?

A. That is right.

[fol. 1151] Q. Does the coal that originates in the Southern Illinois District then move in solid trainloads from Centralia to Galesburg?

A. That is right.

Q. You gave the tonnage rating of the locomotive used there as 6500 tons, but you stated that more was handled, is that right?

A. Our rating shows it as 6500 tons.

Q. Well, approximately how many cars per train do you haul from Centralia to Galesburg?

A. Well, that would be approximately 90 cars in a train like that.

Q. You do haul at times a hundred cars, do you not?

A. Yes, sir.

Q. And sometimes in excess of 100 cars?

A. That is right.

Q. And at Galesburg the train is then broken up and the coal in that train for Chicago is taken out and put in a train going towards Chicago?

A. That is right.

Q. And coal going to these Iowa points or Illinois river points that you referred to would go on a different train, would they not, than the coal you were taking over to Rockford or Rochelle or Polo?

A. That is right.

Q. Now, you referred to the line between Savanna and [fol. 1152] Dubuque as being practically a level line. That territory through there is very rough and hilly, is it not?

A. Along the river the territory is, but we are right down along the bank of the river. Our engineers said there was no grade.

Q. But you had to do considerable blasting and excavating there in order to locate your line there, did you not?

A. I am not familiar with the construction of it. I assume they did some.

Q. Assuming you did, the investment per mile of road would be considerably greater, would it not, than it would be from a point like Galesburg to Rockford or in territory where you have a flat terrain?

A. Well, I presume from Galesburg to Rockford there would be quite a lot of hills to level out.

Q. You don't know that, though?

A. I am not familiar enough with the terrain to really answer your question intelligently.

Q. Coming to the question of these bridges across the Mississippi River, between Rock Island or Moline and Davenport, does that bridge belong to the Burlington over which your trains operate?

A. I can't answer yes or no. I think it is, but I am not sure.

Q. How about between Savanna, is it, and Dubuque, is that bridge owned by the Burlington?

A. Between East Dubuque and Dubuque?

[fol. 1153] Q. Between East Dubuque and Dubuque.

A. The same answer there. I rather think it is owned, but we use the same bridge as the Illinois Central. They may own it. I am not sure.

Q. Do you have any knowledge as to approximately how long those bridges are?

A. No, I haven't.

Q. And you have no knowledge as to the approximate cost of construction of the track and bridge per mile as compared to the cost of constructing a mile of track on the ordinary line of road in Illinois?

A. No.

Mr. Sadell: That is all.

Mr. Cardy: Just one other question.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Pearson, have you made any study or have you any figures showing density of traffic moving north of Galesburg to points in Northern Illinois as compared with the density of traffic moving to these Iowa destinations? Is it about the same or is there a substantial difference? It might be helpful to us if you have those figures.

A. Well, the Iowa——

Mr. Biaett: Excuse me. You want to know if he has any figures, don't you?

Mr. Cardy: If he has any figures, or he can tell in a gen-[fol. 1154] eral way, based on his knowledge, if there is any substantial difference.

Mr. Biaett: Answer first, do you have any figures?

The Witness: No, I have no figures.

Mr. Cardy: All right, that is all.

Exam. Trezise: Mr. Wood.

By Mr. Wood:

Q. Mr. Pearson, if there is any damage found on these bridges between Dubuque and East Dubuque and at Davenport and Rock Island, reported by your transportation department, do you ever get reports about the condition of the bridge?

A. You mean as to the need of their repair?

Q. Yes, sir.

A. That wouldn't come to our department.

Q. Are you in charge of transportation men, the men that handle the transportation, as superintendent of transportation?

A. We have charge of the movement of traffic, but not of the maintenance of the line.

Q. No. I am asking you if any of your men in the transportation department ever report to you the need of any repairs on these bridges?

A. They don't report to me.

Q. They never have?

A. They would report that to the engineering department.

Exam. Trezise: They normally wouldn't make such reports to you?

[fol. 1155] The Witness: Not to us, no, sir.

Mr. Wood: I see.

Mr. Stadell: I have one more question.

Exam. Trezise: All right, Mr. Stadell.

By Mr. Stadell:

Q. In stating in answer to Mr. Biaett's question that in your opinion the transportation or operating conditions, rather, to the Illinois points such as Rockford and Polo, were substantially similar to those to Moline or Rock Island or the other points he referred to along the river, you were basing that only on the conditions obtaining on the Burlington, were you not?

A. That is right.

Q. You have no first hand knowledge of the operating conditions on any of the other railroads in that district?

A. I have not.

Mr. Biaett: My questions were confined to the Burlington.

Exam. Trezise: Any further questions?

Mr. Bather: I have one question, Mr. Examiner.

Exam. Trezise: Mr. Bather.

By Mr. Bather:

Q. How do the transportation conditions in the movement of coal from Galesburg to Rockford compare with the

transportation conditions in the movement from Galesburg to Chicago?

A. From Galesburg to Aurora it would be the same. Then it would be switched out and put in another train to Rochelle, [fol. 1156] where it would be switched into another train for Rockford. So there would be a little extra handling in going to Rockford.

Q. Don't you run through trains from Aurora to Rockford?

A. Not generally. They might if there was a sufficient volume, but usually the trains start at Rochelle.

Q. In the movement of coal from Aurora to Rockford, isn't it a fact that most of that movement is in solid coal trains?

A. Well, I don't believe that it is. I can't say definitely, because I haven't checked that feature of it recently. But I would guess that it was handled in the regular train.

Q. In mixed trains?

A. Yes.

Mr. Bather: That is all.

Exam. Trezise: If there are no further questions, you may be excused, Mr. Pearson.

(Witness excused.)

Exam. Trezise: We will take a few minutes' recess.

(A short recess was taken.)

Exam. Trezise: All right, gentlemen, when you are ready, let us continue.

Mr. Zoll: I will call Mr. Lynch.

S. F. Lynch was sworn and testified as follows:

Direct examination.

By Mr. Zoll:

Q. Will you please state your name.

[fol. 1157] A. S. F. Lynch.

Q. What is your address?

A. Home address?

Q. No, your office.

A. Office address is 135 East 11th Place, Chicago.

Q. What is your position with the Illinois Central System?

A. Superintendent of transportation.

Q. That is in the operating department, is that right?

A. Yes, sir.

Q. How long have you been in the Illinois Central's operating department?

A. I have been working for the Illinois Central for 32½ years, and practically all of that time, with the exception of about eight years in the mechanical department, has been in the operating department.

Q. Could you tell us just a little bit more about what operating positions you have held?

A. Chief clerk to superintendent, assistant trainmaster

Q. Where were those, Mr. Lynch?

A. Chief clerk to superintendent at Vicksburg, Mississippi, and assistant trainmaster and trainmaster at Vicksburg; trainmaster on the Springfield Division, with headquarters at Clinton, having the territory between Centralia and Freeport.

Q. Now, do you have this map, Exhibit 6, before you?

A. I have one here, yes, sir.

[fol. 1158] Q. Now, you will notice that the line of the Illinois Central is shown in red on this map?

A. Yes, sir.

Q. And it shows the Illinois Central serves Southern Illinois, among other coal groups, is that correct?

A. Yes, sir.

Q. Now, the map also shows the Illinois Central serves Chicago, Peoria, Pekin, South Pekin, LaSalle, Mendota, Amboy, Dixon, Polo, Forreston, Freeport, Rockford, and the famous Apple River, Dubuque, as well as Madison, Wisconsin. Do the rails of the Illinois Central reach those points?

A. Yes, sir.

Q. I wish you would tell us what the normal routes are over which the Illinois Central handles bituminous coal from its mines in the Southern Illinois Group to those points?

A. The coal is moved up through DuQuoin to Centralia, and for Chicago the coal is moved from Centralia on up through Champaign and Gilman into Chicago. Most of this coal is moved in solid train lots. The coal for the points like Amboy, Forreston and Mendota, and Dubuque and Rockford, is switched out from the Chicago coal at Centralia

and is moved up what is known as our old main line through Decatur to Clinton, and from Clinton north through Bloomington, LaSalle, Mendota and Forreston and Amboy; and the cars for Dubuque go on to Freeport and are handled by the same crew and engine.

[fol. 1159] Q. You say at Centralia the Chicago coal is switched out?

A. Switched out from coal that moves out to Amboy, Forreston, Mendota.

Q. And those other points you mentioned?

A. Yes, sir.

Q. Is there any other switching done north of Centralia other than at Clinton, along the main line?

A. Clinton would be the only place. They would line up the coal for points north of Clinton. Any coal for points south of Clinton are lined up at Centralia.

Q. How about coal that is interchanged at Mendota?

A. At Mendota they would be lined up to set out at Mendota. It would be in station order.

Q. The same for Forreston, I suppose?

A. Yes, sir.

Q. Do the trains in which you transport cars of coal from Southern Illinois destined to Madison, Wisconsin, contain cars of coal from Southern Illinois destined only to Madison or points beyond Freeport?

A. No, sir. The coal trains and trains that handle coal handle the coal for Amboy and Forreston and Mendota as well as Freeport and Dubuque, as well as Peoria, connections at those points.

Mr. Bather: Do you handle Rockford coal in that train too, Mr. Witness?

[fol. 1160] The Witness: Yes, sir.

By Mr. Zoll:

Q. Now, could you tell us just how those cars of coal are handled from Southern Illinois to those destinations? You will have to divide your destinations, I suppose. You might take Madison and Freeport and Rockford and Dubuque, for example, in a group.

A. To Beloit and Janesville the usual route is to the Milwaukee at Mendota or the North Western at South Pekin. To Fort Atkinson and Lake Mills it is to the North

Western at South Pekin. For Burlington, Wisconsin, the interchange is principally at Chicago. For Clinton, Iowa, it is to the Burlington at Centralia, the North Western at South Pekin, and the Milwaukee at Forreston or Mendota. For Davenport, it is to the Burlington at Centralia or Peoria, or the Milwaukee at Mendota or Forreston. For Savanna, it is to the Burlington at Centralia or the Milwaukee at Mendota or Forreston.

Q. I would like to get some distances in the record here, Mr. Lynch. Exhibit 3, Section 5, page 18, shows that the average distance from origins on the Illinois Central in Southern Illinois to Freeport is 340 miles. Could you tell me what the distance is via the Illinois Central from Freeport to Madison?

A. 62 miles.

Q. And Freeport to Rockford?

A. 27 miles.

Q. And Freeport to Apple River?

[fol. 1161] A. 31 miles.

Q. Freeport to Dubuque?

A. 69 miles.

Q. Mendota to Freeport?

A. 63 miles.

Q. And LaSalle to Freeport?

A. 79 miles.

Q. As I understand you, you said that coal for Dubuque, Apple River, Madison and Rockford and Freeport is handled in the same train as far as Freeport?

A. Yes, sir.

Q. And could you say what happens then?

A. At Freeport then it is switched out and classified, and that which goes to Dubuque is placed on a westbound train, to Madison on a northbound train, and to Rockford on an eastbound train.

Q. Now, aside from placing the cars in station order, are all of the cars, regardless of destination, accorded the same treatment?

A. Yes, sir.

Q. They are handled in the same manner?

A. Yes, sir.

Q. Do the same trains handle the interstate as well as the state coal?

A. Yes, sir.

[fol. 1162] Q. Is any distinction made, Mr. Lynch, between the interstate and intrastate coal, in so far as the switching operations along the way are concerned?

A. No, sir.

Q. What is the difference then in the conditions that affect the transportation of interstate as distinguished from intrastate coal?

A. Well, the only difference I would see would be distance.

Mr. Zoll: I think that is all.

Cross-examination.

By Mr. Cardy:

Q. Just one question: what is the distance between LaSalle and Dixon?

A. LaSalle is 79 and Dixon is 35—35 from 79 is 44 miles.

Q. As I understand, the traffic destined to LaSalle and Dixon moves right through both those points to Freeport. If you have a car for LaSalle, you set it out at LaSalle, and if you have a car for Dixon you would set it out at Dixon and the train would go through the terminal points to Freeport?

A. Yes, sir.

Q. Then the distribution of coal say for Rockford, Beloit, would be split up and would go either eastbound or westbound?

A. Yes, sir.

Q. You stated there was no substantial difference in transportation conditions on the movement of interstate coal, we will say, westbound, or were you talking about Iowa [fol. 1163] or Wisconsin? You said interstate coal. Now, you didn't mean to say there was no substantial difference on the movement to Iowa points as compared with Illinois points, did you?

A. No, I said the only difference I see particularly is distance.

Q. You had in mind, I take it, points like Beloit in Wisconsin?

A. I had in mind any of those points we were dealing with.

Q. Did you make a study at all as to the conditions in moving across the river and to points beyond the river where the distance might be substantially greater?

Mr. Zoll: Mr. Lynch restricted his testimony in this instance to the transportation conditions to these comparative points that we have used in Mr. Robertson's exhibits.

Mr. Cardy: He was not talking about Iowa destinations?

Mr. Zoll: Central Iowa?

Mr. Cardy: Yes, or points west of the river.

Mr. Zoll: His testimony didn't go to that.

Mr. Cardy: Well, if it didn't go that far, then I have nothing further.

Exam. Trezise: Any further questions?

Mr. Cardy: Well, I think that Mr. Zoll has answered my question, that he wasn't attempting to prove interstate conditions in Iowa by this witness. Is that true?

Mr. Vesey: You said Central Iowa; what you meant was he did compare these points and Eastern Iowa destinations? [fol. 1164] Mr. Zoll: Yes. He wasn't talking about Des Moines or Fort Dodge.

Mr. Vesey: Yes, but he was talking about Eastern Iowa?

Mr. Zoll: The points in Mr. Robertson's exhibits, which include Dubuque, for example, on the I. C.

By Mr. Cardy:

Q. You didn't take into consideration the terminal conditions and the conditions in Iowa, Eastern Iowa, along the river there, we will say, to Lebanon or Dubuque, when you said that the transportation conditions interstate and state were substantially the same?

A. I said the difference would be distance, that would be my judgment.

Q. That is all it is, distance?

A. Yes.

Q. You didn't make any study to see if there was a real substantial difference in the transportation conditions?

A. What kind of difference did you have in mind, sir?

Q. Well, possibly the cost, it might cost you some substantial amount to make deliveries at Dubuque across the river. I don't know what the terminal conditions are at Dubuque as compared with Illinois points. You haven't described it. Is there any difference at all?

A. You are confronted with transportation problems in the transportation industry almost any way you turn. Why, those problems you speak of, we have them everywhere.

[fol. 1165] Q. And the relative shortness makes a difference, making deliveries, as compared to a point like Rockford and Beloit, where you have not the river to be confronted with?

A. Oh, yes. You find there at LaSalle, why, we have had, in going across the river at LaSalle, why, we have quite a long bridge there too. We recently had a lot of floods on other parts of the railroad. We always have problems of some kind or another. I guess that is what keeps me working on the railroad.

Q. You didn't have those conditions in mind when you said distance was the only factor?

A. As far as I can see, that is the only thing.

Mr. Cardy: All right.

By Mr. Vesey:

Q. I understand from that answer, Mr. Lynch, then certainly present in your mind now is the fact that bridges are handicaps and hazards of such nature as to present different transportation conditions, is that right?

A. I was just pointing out that regardless of what territory we have, why, we have some kind of problem, and he spoke of bridges, and I spoke of the bridge at LaSalle, that we had had trouble with it.

Q. Then I take it, the longer the span, so to speak, the greater the problem?

A. No. It is the construction and the kind of foundation it has and whether it is an overhead or underslung bridge, things I don't know anything about to really talk, because [fol. 1166] I don't know anything about bridges, except to go across them.

Q. Well, you just mentioned floods. I take it, then, the tendency of a river to flood would be an important item in so far as transportation?

A. It might if the water got over the approaches—for instance, right now at Murphysboro we are washed out. We hope to get it in service again in about a month.

Q. As I gather from your testimony and in looking at Exhibit 6, in your opinion there is no difference in transportation conditions except in so far as distance is concerned, whether you move directly along the rails of your railroad or whether you move along your railroad

and switch over to some other railroad going into Eastern Iowa?

A. I am not in a position to testify about anybody else's railroad. I spent all my life on the Illinois Central.

Q. Wouldn't you think it would be an important thing in connection with transportation conditions to find out what the nature of the switching arrangements or switching charges and the like are in testifying as to operating conditions, whether you are moving off your lines or whether you are moving on your lines the whole distance, in making comparisons?

A. To make a comparison?

Q. Yes, sir.

A. No, sir, I had not.

Q. You have not what?

[fol. 1167] A. Made any comparison as to cost of switching and switching charges that you referred to there.

Q. How did you arrive at the conclusion there was no substantial difference in the operating conditions between your service to the Illinois destinations on your own line and service to Iowa destinations where you transfer that coal on to other roads for delivery? How did you make that determination?

A. The only thing that I say is that it moves just about as well for us there, with as little difficulty going one place as it does another.

Q. How do you know?

A. Well, because of the fact I watch them every day and have for a number of years.

Q. What do you watch?

A. Watch the movement of trains and see how they go over the road, how the business moves, and the small number of complaints we get regarding transit and delays and so forth.

Q. Is that what you mean by operating conditions in your answers that you gave, that there was no substantial difference? Is that the basis that you used?

A. Is what the basis?

Q. Just what you have recited, is that the basis for your answers that there was no substantial difference in operating conditions?

A. That would be one of the bases for it.

[fol. 1168] Q. What is the other?

A. Well, the other is that nobody has ever told us, we never get any information that there is any particular difference in operation over one part of a railroad compared with another.

Q. So unless somebody tells you there is a difference, you just assume there isn't any?

A. As far as my experience, 32½ years with the railroad.

Q. Did you have any other basis for your answer?

A. I don't think of any right now.

Q. Those are the two things you relied on to make the statement that there was no difference in transportation conditions?

A. Yes, sir.

Q. You said "yes"?

A. I said, yes.

Mr. Vesey: That is all.

Exam. Trezise: Any further questions?

By Mr. Stadell:

Q. As I understood it, Mr. Lynch, your testimony was restricted, so far as all the points of destination are involved, to conditions on the Illinois Central?

A. Yes.

Q. You are not testifying here about the operating conditions on any other railroad from or to any point in Illinois or from Illinois to any point outside of Illinois?

A. I couldn't do it intelligently.

Q. You have no personal knowledge of the operating [fol. 1169] conditions on any other railroad?

A. No, sir.

Mr. Stadell: That is all.

Exam. Trezise: Any further questions?

By Mr. Bather:

Q. Mr. Lynch, the movement of coal to Freeport and Rockford from Clinton, is that coal moved in solid coal trains?

A. No, sir, not generally speaking.

Q. But there is a heavy movement in solid coal trains from Clinton originating at Southern Illinois to Freeport?

A. Yes, wherever we have the business, why, then we would have a trainload of it. If we had enough business to

justify it, but there are very few trains that don't have something else in them besides coal.

Q. But the bulk of the traffic moving on that line, Clinton to Freeport, is a coal movement?

A. Yes, sir.

Q. How do the transportation conditions from Clinton through Freeport to Rockford compare with the transportation conditions from Centralia to Chicago?

A. Well, Centralia to Chicago, of course, is double-track, and the line up through Clinton is a single-track railroad. That is one of the differences in there. They there are parts of this line through Clinton that isn't block-signalled and it isn't maintained to as high a degree because of the [fol. 1170] fact they don't operate passenger trains on it. That is strictly a single-track freight line.

Q. But you do operate passenger trains between Centralia and Chicago on that double-track?

A. Yes, sir.

Q. As I understand it, there is no passenger service between Clinton and Freeport?

A. No, sir, between Centralia and Freeport.

Q. Now, how do the terminal conditions at Rockford compare with the terminal conditions at Chicago in making deliveries of coal at those two points?

A. How do you mean, how do they compare?

Q. Well, is your terminal expense in making deliveries in the Chicago District greater than they would be at Freeport or Rockford?

A. I don't know, sir. I haven't any figures on what they cost. What we figure on usually is the cars handled per hour.

Q. I am talking about operating conditions. Are the operating conditions in making deliveries at Freeport and Rockford the same as they are at Chicago?

A. The element of distance would come in there.

Q. And also the element of getting the cars at Chicago to connecting lines through the belt lines, would that be considered?

A. Yes, sir. Some of the lines will take delivery through the Belt, and to others we make direct delivery.

[fol. 1171] Q. But you don't have that same condition in so far as Rockford and Freeport are concerned?

A. No, sir.

Mr. Bather: That is all.

Mr. Zoll: If there is no other cross-examination, there are a few additional questions I would like to ask.

By Mr. Bather:

Q. There is one other point I would like to make. You say the element of distance would enter into that terminal situation. What do you mean by the element of distance?

A. I mean, for instance, you take a car from Markham or a dozen cars and take them, to deliver them or place them, why, it would be a much greater distance than you would go anywhere within the yard limits at Freeport or Rockford. That is what I meant by that.

Q. But still that has to be considered in the line—haul service rendered by the Illinois Central Railroad?

A. It would have to be considered, is that your question?

Q. Yes.

A. I presume so. I wouldn't know just what kind of consideration we would give it. I was just basing it on my own personal knowledge of what takes place and what I have seen.

Q. As I understand your answer, does this coal come into the Chicago District to your Markham yard and is broken up there?

A. Yes, sir.

[fol. 1172] Q. And those cars of coal are classified according to the deliveries on connecting lines, where a connecting line delivery is made?

A. Yes, sir, or whether it is going to be placed at some industry there.

Q. Now, at Freeport and Rockford you haven't got the same complicated situation as you would have in making such deliveries at Chicago?

A. No, I wouldn't think so, not near as many deliveries to be made, not as many places to have the coal placed as there is at Chicago.

Q. And your switching to connecting lines at Rockford and Freeport is comparatively simple as compared with a terminal like Chicago?

A. Yes.

Mr. Bather: That is all.

Mr. Vesey: May I ask one question in view of that?

Exam. Trezise: Go ahead.

By Mr. Vesey:

Q. In other words, I take it from these last answers that you have given to Mr. Stadell and Mr. Bather, that in appraising operating conditions when comparing movements from, say, two origin groups or to two destinations, the principal point of differentiation between the two is the terminal conditions?

A. I would say so, yes.

[fol. 1173] Q. In other words, it costs just as much to move a car of coal the first ten miles as it does the last ten miles on a given run?

A. Yes. I wouldn't see any difference particularly in the cost.

Q. And you could broaden that out, whether it was the first hundred or the last hundred, or the first hundred against the last ten miles, mile per mile, the cost is the same once on the line?

A. You would have certain grade conditions that would make you burn more coal and keep you from hauling as heavy a train. That would have something to do with your difference in the cost, as far as comparing one part of the railroad with another part.

Q. Now, except for that, it would be the same?

A. I can't think of any other particular difference.

Q. Now, when you talked about grade, is there any substantial difference in cost between handling coal over a road where you have a .78 of one per cent grade as against .50 of one per cent?

A. That much difference wouldn't make a great deal of difference.

Q. It is almost infinitesimal?

A. Yes.

Q. So that in appraising operating conditions from your point of view, as I understand it now, the principal point of inquiry should be terminal conditions, terminal charges?

A. That is a factor, yes, sir.

[fol. 1174] Q. That is the principal factor, isn't it?

A. Well, I wouldn't say that it is especially the principal factor.

Q. Why wouldn't you say that?

A. Because we would have to consider all these other things we have been talking about here.

Q. You mean you would have to take in the other elements?

A. We have to take into consideration all of the different features of the operation.

Exam. Trezise: Any further questions of Mr. Lynch? (No response.)

By Exam. Trezise:

Q. Now, Mr. Lynch, you are skilled in appraising operating conditions, would you say that? That is your job, isn't it?

A. That is one of them, yes.

Q. Well, in other words, you know transportation conditions on the Illinois Central and recognize them when you see them?

A. Yes, sir.

Q. Well in connection with your testimony, and no hypothetical question whatever is assumed here, would you say that on the average or any other measure you want to make, that one mile of transportation within Illinois on this coal is substantially the equivalent of or similar to one mile of transportation to the Eastern Iowa destinations?

A. As far as the Illinois Central line is concerned, I [fol. 1175] would say there is no appreciable difference.

Q. Then my next question is, from what factors do you reach that conclusion?

A. Just the general operation.

Q. Is it because of the locomotive tractive effort required with respect to the two types of transportation? Is it because of the similarity of grades with respect to the two types of transportation?

A. That is the main thing, sir.

Q. Or is it with respect to the terminal services that might be performed with respect to the two types of transportation?

A. That would be a factor. If you are thinking on costs, why, we would have to consider the terminal expense.

Q. And when you figure on costs, have you figured on costs when you reached this conclusion, and if so, to what extent?

A. No, sir, I haven't figured on the cost.

Mr. Zoll: Mr. Examiner, in view of some of those questions I would like to ask Mr. Lynch a few questions.

Redirect examination.

By Mr. Zoll:

Q. Mr. Lynch, between Benton, Illinois, and DuQuoin, Illinois, would you tell me what the ruling grade is?

A. Benton and DuQuoin?

Q. Or between Benton and Centralia, whichever way you happen to have it.

A. Well, it is .87 of one per cent between Benton and [fol. 1176] DuQuoin; and DuQuoin to Centralia it is .49 of one per cent.

Q. Do you know the tractive force of the locomotive used in handling coal between those points?

A. Well, between Benton and DuQuoin we use what is known as the Mikado with a tractive force of 51.231.

Q. How about the tonnage rating of that?

A. The tonnage rating there is 2855. Of course, that is somewhat of a coal pickup run, like Mr. Pearson, the man that preceded me, described. We don't pay much attention to that, because we never have them loaded down anyway.

Q. How about the tractive force of the locomotive used between DuQuoin and Centralia?

A. 85,395 and potential tonnage rating is 10,555.

Q. What is the ruling grade between Centralia and Champaign?

A. Centralia to Champaign is northbound .31 of one per cent.

Q. And how about the tractive force of those locomotives?

A. Centralia to Champaign, 73,768, with 10,635 tonnage rating.

Q. What is the ruling grade between Champaign and Chicago?

A. Champaign and Chicago, .55 of one.

Q. Now, the locomotive and tonnage rating of that locomotive is the same as between Centralia and Champaign?

A. Yes, sir.

Q. Now, what is the ruling grade between Centralia and Decatur?

A. Centralia to Decatur is .76 of one per cent.

Q. And the tractive force of the locomotive?

[fol. 1177] A. 69,170, with a 4800 ton rating.

Q. That is the locomotive used to transport these cars of coal, is that right?

A. Yes, sir.

Q. How about Decatur to Clinton?

A. Same thing, 69,170, with a 7,000 ton rating.

Q. Why would that rating be different?

A. The lay of the land, the track.

Q. What is the ruling grade?

A. The ruling grade between Decatur and Clinton is .51 of one.

Q. By "one" you mean one per cent, is that right?

A. Yes, sir.

Q. Now, could you tell me the ruling grade between Decatur on our old main line and Peoria?

A. Decatur and Peoria, one per cent grade.

Q. What is the tractive force of the locomotive used?

A. 69,170, with a 6,000 ton rating.

Q. Now, let us go up north of Clinton, Mr. Lynch, to Mendota, what is the ruling grade from Clinton to Mendota?

A. Clinton to Mendota is .81 of one per cent.

Q. And what is it from Mendota to Freeport?

A. Mendota to Freeport is .76 of one per cent.

Q. Now, between Clinton and Mendota what is the tractive force of the locomotive used?

A. 69,170, with a 3855 tonnage rating.

[fol. 1178] Q. And Mendota to Freeport?

A. 69,170, with a 3675 tonnage rating.

Q. Now, go north of Freeport to Madison, Mr. Lynch. What is the ruling grade there?

A. Madison from Freeport is one per cent grade.

Q. That is the same as between Decatur and Peoria?

A. Yes, sir.

Q. This is the ruling grade northbound in each instance?

A. Yes, sir, northbound.

Q. Now, what is the tractive force of the locomotive?

A. 40,418, with 1595 tonnage rating.

Q. What is the ruling grade between Freeport and Rockford?

A. Freeport to Rockford is .49 of one per cent.

Q. And Freeport to Dubuque?

A. .81 of one per cent.

Q. What is the tractive force of the locomotive between Freeport and Rockford?

A. 65,868, with a 4,005 tonnage rating.

Q. Let me have the same information between Freeport and Dubuque westbound?

A. 85,398, with a 4725 tonnage rating.

Mr. Hunter: Mr. Zoll, could I inquire there if those are actual tonnage ratings or factor ratings?

The Witness: Those are factor ratings, equated ratings, as we call them.

[fol. 1179] Mr. Zoll: That is all I have.

Exam. Trezise: Any further questions?

Recross examination.

By Mr. Bather:

Q. Your grades are averages, are they not?

A. They are furnished by our engineering department.

Q. What is the grade on your line west of Apple River to Dubuque, do you have that information?

A. No. The only one I got is between Freeport and Dubuque.

Mr. Zoll: That wouldn't be west of Apple River, would it?

The Witness: Sir?

Mr. Zoll: Could you tell whether that was west of Apple River or east of Apple River?

The Witness: No. I have got that information to Dubuque.

Mr. Zoll: You don't have your timetable to show where the ruling grade is?

The Witness: No, sir. They don't have them shown on the Iowa Division.

By Mr. Bather:

Q. What I am getting at, you have a very substantial grade westward from Apple River going into Galena, haven't you?

A. I think so, yes.

Q. That would be over one per cent grade there, would it not?

A. It would be over one?

Q. Yes.

A. Between Freeport and Dubuque?

[fol. 1180] Q. No, west of Apple River to Dubuque.

A. The maximum grade between Freeport and Dubuque westbound is .76 of one per cent.

Q. That is the maximum?

A. Yes, sir.

Exam. Trezise: Any further questions?

Mr. Cardy: Just one question.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Lynch, on the movement of carloads of coal from Southern Illinois to East St. Louis and St. Louis, would you say there is or is not a substantial difference in the movement of coal to St. Louis versus coal to East St. Louis, based upon your former studies?

A. I didn't get the question, sir.

Q. Take a carload of coal moving from Southern Illinois to St. Louis versus East St. Louis, would you say there is or is not a substantial difference in the transportation conditions on the movement of coal to those two points?

Mr. Zoll: I object to that question on the ground that that situation isn't here.

Exam. Trezise: No, that is not here, but it is a hypothetical question about some movement to St. Louis.

Mr. Cardy: State versus interstate traffic, that is all I am talking about.

Exam. Trezise: Go ahead, tell him about St. Louis, if [fol. 1181] you have those facts worked up.

The Witness: Well, just from my observation, why, then the difference would be that if a car was going to East St. Louis, why, we would take our own switch engine and place it. If it was going to St. Louis, we would have to give it to the Terminal Company to handle it, Terminal Railroad Association.

By Mr. Cardy:

Q. In other words, I understand your answer to be that on the delivery of coal to St. Louis and East St. Louis there is a difference in state versus interstate transportation, is that correct?

Mr. Zoll: What you want to know is whether there is a difference in transportation conditions between East St. Louis and St. Louis?

Mr. Cardy: Yes, if he knows.

The Witness. Yes, that difference that I spoke of there, that we would have to make the delivery to the Terminal Railroad Association and have them handle the cars to St. Louis.

By Mr. Cardy:

Q. That difference is brought about by the difference in delivery at terminal points?

A. It is like this gentleman asked me a little while ago, whether the difference would be like it is at Chicago and Freeport and Rockford.

Mr. Cardy: That is all.

By Mr. Stadell:

Q. I have a couple of questions. The lowest tonnage rating that you gave, as I recall it, on the line from Cen-
[fol. 1182] tralia north, from Southern Illinois, to any of these points was 4800 tons, is that right?

A. No, sir. I gave Benton to DuQuoin, 2855, and Freeport to Madison, 1595.

Q. That is in the coal field itself, the first one?

A. Yes, sir. Freeport to Madison is 1595.

Q. Well, I am restricting this to the Illinois points.

A. Oh, yes.

Q. Restricting it to the Illinois points, that was the lowest. About how many cars per train would you be able to haul with a rating like that?

[fol. 1183] A. With 4800?

Q. Yes; about 60 cars?

A. 60, 75, 80, depending on the tonnage, gross tonnage, and then there is a car factor in that, as I explained a while ago. This is called equated tonnage. This isn't actual tonnage.

Q. Well, are these the adjusted tonnage ratings?

A. Adjusted ratings.

Q. These are the adjusted ratings?

A. Yes, sir.

Q. The ratings without the adjustment factor would be higher than these?

A. Without the adjustment factor in them they would be higher, yes, sir. You see, what we do, we add a certain car factor for each car that is handled in a train.

Q. That is more or less an arbitrary?

A. Yes, sir. That is based on wheel bar friction and drawbar friction, and other things that go to affect it.

Q. That would depend on what line of road you would be operating on, in other words, the adjustment would be different?

A. Yes, sir. The adjustment factor is not nearly as high in rolling territory as it is on straight level where there is a pull.

Q. Take the tonnage rating here, as I understood you to say, the ruling grade between Centralia and Decatur was .76 of 1 per cent?

[fol. 1184] A. Yes, sir.

Q. Between Decatur and Clinton it is .51 of 1 per cent?

A. Decatur and Clinton?

Q. Yes.

A. It is .51 of 1 per cent.

Q. Now, you use the same type of locomotive between Centralia and Decatur as you do between Decatur and Clinton?

A. Yes.

Q. That is, it has the same tractive effort?

A. Yes, sir.

Q. But the tonnage rating of that locomotive in the stretch of track between Centralia and Decatur over which you have this .76 of 1 per cent grade is but 4800 tons, while on the stretch of track between Decatur and Clinton where you have the .51 of 1 per cent grade it is 7,000 tons?

A. I must have gotten those figures twisted, or you had them twisted for me, one or the other now, because the tonnage rating from Centralia to Decatur is 4800 and from Decatur to Clinton it is 7,000.

Q. That is right. That is what I gave you.

A. Now, Centralia to Decatur, the ruling grade is .76 of 1, and from Decatur to Clinton it is .51 of 1.

Q. Yes, those are the figures I gave you.

A. Are they?

Q. Yes. First, I will ask you, you said that with the [fol. 1185] tonnage rating of 4800 tons between Decatur and Clinton, between which you have the .51 of 1 per cent ruling

grade, you could haul between 60 and 85 cars. Now, how many cars will you haul between Decatur and Clinton where you have the 7,000 ton rating?

A. We wouldn't haul very many more. As a matter of fact, we wouldn't have the business available between those points. This is just tonnage rating. It isn't what they regularly handle there. You take what they regularly handle there on the whole Clinton district, the average is 3502 tons. Then, another thing, while we have these tonnage ratings to show the maximum that can be pulled by the engine, why, we have to be governed by the siding facilities for the meeting of trains. It isn't always a question of just how much you can pull that you put behind an engine, just what can be pulled by it.

Q. Normally, if you had the business, if you could haul 60 to 85 cars on a train where you had a tonnage rating on account of the grade, of 4800 tons, you could haul a considerable greater number of cars per train with the same engine over a stretch of track where you had a .51 of 1 per cent of grade than you could over a .78 of 1 per cent grade, couldn't you?

A. Yes, sir.

Q. But without knowing all of the conditions over the railroad, such as you mentioned here, the siding, capacity, and the yard capacity, and the operating conditions, these tonnage ratings and tractive effort of locomotives and so [fol. 1186] forth don't mean very much, do they, I mean to a party that would be reading a record such as this, without knowing all these other conditions?

A. Oh, just taking the tonnage rating by itself, why, then that wouldn't mean anything to somebody that wasn't familiar with the railroad.

Q. Well, anyone familiar with the railroad, in order to know the actual operating conditions there would have to take into consideration the number of trains operated over the stretch of track?

A. Yes, density of traffic is a factor.

Q. And a very important factor, isn't it?

A. Yes, sir.

Q. You have to take into consideration the number of cars per train?

A. Because of your siding capacity, and the business available would be the main factor. We have got some

locomotives that can pull just plenty of cars, but it is a question of what we have available.

Q. And in determining these transportation conditions you would have to take into consideration the character of the territory through which you operate, wouldn't you?

A. What do you mean by "character"?

Q. Well, whether you had a double line or single line of track and whether you were operating over bridges, particularly if you were operating over a bridge jointly with [fol. 1187] some other line, that would affect your operation, wouldn't it?

A. Well, if your traffic was too dense for the single track line, it would affect it, yes.

Q. Does the Illinois Central own the bridge between East Dubuque and Dubuque?

A. I don't know, sir.

Q. The Illinois Central does not reach Clinton, Iowa, or Davenport, or any of these other west bank Mississippi Iowa points?

A. No, sir.

By Mr. Zoll:

Q. Mr. Lynch, in answer to one of Mr. Stadell's questions, I understood you to say that the tonnage ratings which you gave were adjusted, is that right? Are those adjusted or equated ratings, is that what you said?

A. No, this is a flat rating that we use for the purpose of arriving at the tonnage on an equated or adjusted basis. You see, you can't figure this as an equated rating until you know how many cars you are going to put in the train, because you add to the car the car factor for each car that you have in the train. I must have misstated it.

Q. This is the unadjusted figure, is that right?

A. That is the total potential loaded car figure established with dynamometer cars.

Q. I understood you to say this was an equated figure. I was wondering if you had done something to this figure.

A. That is what they call them, the equated figures. But [fol. 1188] a car factor isn't figured in there. That is all you would have to know, how many cars you handled, before you could get that car factor.

Q. This is then unadjusted?

A. That is the total potential of the locomotive. If I stated it in any other way, I must have misstated it.

Mr. Kaylor: Mr. Lynch, you in your work are on the Clinton division and none of your work on the Illinois Central is on the Centralia division?

The Witness: No, sir, I was in there on that railroad for six years.

Mr. Kaylor: How long were you over on the main line division?

The Witness: On the main line division, on the Vicksburg division is where I spent most of my time. I spent twenty-one years there.

Mr. Kaylor: Were you ever on the so-called Champaign division?

The Witness: No, sir. I have charge of that in my present work, but I have never worked on the Illinois division.

Mr. Kaylor: Do you think that the operation of the line from Centralia to Chicago is more economical than the line from Centralia to Dubuque?

The Witness: It depends on the volume of traffic that you would have to handle. That would be one of the governing [fol. 1189] factors.

Mr. Kaylor: Well, you have no passenger service now on the line through Clinton, do you?

The Witness: No, sir, from Centralia to Freeport.

Mr. Kaylor: But you do have passenger service on the main line?

The Witness: Yes, sir.

Mr. Kaylor: I notice that this line from Centralia though is almost as heavy a tonnage rating as some of the other lines.

The Witness: Yes, sir.

Mr. Kaylor: Now, without the passenger service on there, is there anything in the difference of cost that you have on the main line operation?

The Witness: I don't know, sir. I wouldn't be able to answer that intelligently.

Exam. Trezise: Any further questions, Mr. Vesey?

By Mr. Vesey:

Q. How do you determine, Mr. Lynch, what type of engine you use over a particular line?

A. What type?

Q. Yes, type.

A. Well, just as I said a while ago, one of the main things is what traffic you have to handle. That would be one of the things. Then after you found out what traffic you were going to have — handle, you would want to fix it so you can haul as much tonnage as possible with one locomotive, [fol. 1190] because that keeps your expense down. But another factor in connection with it is the maintenance of way department has certain restrictions on certain power over certain track and speed limits that they put on because of the particular construction.

Q. So taking all of those factors into account, you then come directly down to a system here, as far as the Illinois Central is concerned, where you have various locomotives in use, I mean different locomotives in use, different types over different sections of the railroad, isn't that true?

A. Yes.

Q. So when you give us tonnage ratings and tractive effort, they are all tied to the particular engine that you are considering at the moment, is that right?

A. Yes, sir.

Q. So if you wanted to switch the engines around, you could have different results, so far as tonnage ratings and tractive effort is concerned, wouldn't you, on any stretch of this track?

A. You might get a little difference out of that. But if you are speaking of expense, they pay the engine crew on the weight on driver, and the larger the driver the more coal it uses, and those are factors you have to consider in what it will cost you.

Q. Those are other factors?

A. Yes, sir, that enter into cost.

Q. Let me ask you, as an operating man, the figures you [fol. 1191] have given here for tractive effort and tonnage rating are just meaningless figures when it comes to appraising operating conditions over this railroad?

A. Oh, no.

Mr. Zoll: I object to that question.

Exam. Trezise: You can ask him if they are.

Mr. Vesey: I just asked him if they are.

Mr. Zoll: You are asking him if this stuff he has given is meaningless?

Mr. Vesey: That is right, when it comes to showing operating conditions over the railroad.

The Witness: I don't agree with you.

By Mr. Vesey:

Q. You think these figures you have given for tonnage ratings and tractive effort in and of themselves are sufficient to enable a disinterested person to make a fair appraisal of the operating conditions over your railroad on any given stretch of track compared with another?

A. No, sir, I don't agree with that.

Exam. Trezise: Now, you just give your testimony. Don't agree or disagree. He is asking you to tell him. Don't agree or disagree.

The Witness: The question as I got it was as to whether you could take these tonnage ratings, whether a disinterested person could take these tonnage ratings and arrive at some conclusion in connection with the cost of operation [fol. 1192] or the method of operation?

By Mr. Vesey:

Q. And arrive at a conclusion with respect to the operating conditions over any given section of your track as against another section.

A. You would have to take the tonnage ratings over a particular section of track, and if the man on the stand this morning from the Burlington wanted to make a comparison, he would have to select a piece of his track and make a comparison. But these particular figures would not do you as an attorney any special good in considering the railroad operation.

Q. What good would they do the Interstate Commerce Commission?

Mr. Zoll: I object to that question on the ground it is up to the Commission to say.

Mr. Vesey: I am just trying to find out what we have got here.

Exam. Trezise: Well now, hadn't we better ask him whether he can appraise transportation conditions by that factor? Is that a factor by which you can appraise the transportation conditions?

The Witness: Yes, sir, that is one of the factors.

Exam. Trezise: It is one of the factors.

The Witness: Yes, sir.

Exam. Trezise: Does that help you any there? It is one of the factors that he uses.

By Mr. Vesey:

Q. All right, that is one of them. Now, I gather from [fol. 1193] your testimony there are certain others, is that right?

A. Certain other what?

Q. Certain other factors that you would have to appraise in determining operating conditions on this railroad.

A. Oh, yes, sir. You can't just take any one particular item and figure on it.

Q. As your testimony stands, as you have given it this morning, have you given us all of the facts which are pertinent and germane to a determination of operating conditions on this railroad?

A. As far as I know, I have. I haven't tried to hold out anything on you, if that is what you mean.

Q. I mean, have we got them all or not?

A. Oh, I don't know.

Q. You don't know whether we have or not?

A. No.

Q. You mean you suspect you may have left something out?

A. No, sir, I don't think so.

Q. What do you mean then, you don't know whether we have got them all or not?

A. It would depend on what you considered, what was that word you used, germane.

Q. Yes, everything that is pertinent to determining operating conditions.

[fol. 1194] A. As far as I know, you have, as far as operating conditions from a railroad standpoint, but I don't know whether that will suit you or not. Apparently up to now it doesn't.

Exam. Trezise: Can you make an approximate appraisal of your transportation conditions from the type of evidence you have given?

The Witness: Yes, I think any railroad man can take the figures you have got in there and decide what kind of a railroad you have got. That is the dope we use every day,

but I am not saying that would be exactly the information Mr. Vesey wants over there, because I don't know what kind of a railroad man he is. He might be the same kind of a railroad man as I am a lawyer. I didn't mean to be funny about it at all, sir, but I have just told you the truth about everything that I have been asked, so far as I know.

By Mr. Vesey:

Q. Let me ask you a question. Now, you remember your testimony that you have given this morning. I want to ask you this question, Mr. Lynch: If I give you the tonnage ratings and tractive efforts of the several locomotives over a given railroad A and the same data with respect to another given railroad B—it happens that you have never been on either one of those two railroad lines—do you mean to tell me that from those facts that you can make a fair appraisal of the operating conditions on those two railroads?

A. No, I wouldn't say that, just taking the tonnage [fol. 1195] ratings. Of course, you would have to have your grade conditions and——

Q. Suppose I give you the third factor then, the ruling grade.

A. The ruling grade and the tonnage figure, then you would want the actual tonnage handled.

Q. What else would you want, to determine the operating conditions on those two railroads? Is that all you would need?

A. I think that is most of it.

Q. You could then give an appraisal of the operating conditions of those two roads?

A. What do you mean by appraisals—drawing a comparison between them?

Q. Tell us whether they were the same, the extent to which they differed, and the like, could you do that on those facts?

A. Oh, yes, when you set those figures up side by side, then they speak for themselves. You could tell what the difference was then immediately.

Q. That is all you would need?

A. Well, it would depend on what you are seeking, as to whether that is all you need or not. If I was going to analyze a whole operation, why, I would want more figures than that.

Q. I am just talking about operating conditions on those two roads.

A. But operating conditions covers a multitude of sins. That covers a lot of things.

Q. What operating conditions couldn't you determine [fol. 1196] from those three figures I have just given you, tractive effort, tonnage rating, ruling grade, now, to determine the operating conditions of those two railroads A and B, what else would you have to have?

A. What do you mean by operating conditions?

Q. Just exactly what you meant when you said operating conditions this morning, when you first sat on that chair. Now, what else do you need to determine the operating conditions on those two roads?

A. I wouldn't need anything else, I don't think, just to set up those figures and make a comparison between the two of them.

Q. And that would tell you the operating conditions of A as against B?

A. The tonnage figures, the tractive effort and the grade.

Q. That would tell you what the operating conditions on those two roads were, would it?

Exam. Trezise: Well, is there anything else that would help you?

Mr. Vesey: If there is anything else he has to have, that is what I want to find out.

Exam. Trezise: Would it help you any to be familiar with the railroad and see it?

The Witness: Oh, yes.

By Mr. Vesey:

Q. Would you have to see it?

A. I wouldn't want to pass on anything sight unseen, by [fol. 1197] just taking those figures.

Q. Why wouldn't you?

A. I don't think it would be good judgment.

Q. Well, what is wrong with it? That is what I want to find out. Let me put it to you this way: In other words, taking that answer, your last answer, in your opinion you would not think it good judgment for the Interstate Commerce Commission to take those three factors and pass on the operating conditions of your road as against another road?

A. They don't do it. They have got 3300 factors or they have got dope of all kinds from all railroads. There is a regular set of reports made up that goes to the Commission.

Q. But just coming down to your testimony, you would say it would not be good judgment to make an appraisal on the basis of the factors you have given us this morning, just those factors alone?

A. In other words, you want me to say that the testimony I gave isn't any good for the purpose for which it was given. Is that what you want me to say?

Q. I am just asking you to give us your opinion.

A. I will say the questions I answered for the purpose they were given, I think were all right.

Q. And that purpose was what?

A. That purpose was to furnish to the Commission here and the other parties that are here interested information [fol. 1198] as to the operation of the Illinois Central.

Mr. Vesey: I think that is all.

The Witness: And this was in answer to the questions asked. I didn't prompt any of this stuff, to start with.

By Mr. Stadell:

Q. I have one more question. Wouldn't you say that the degree of curvature on the railroad was a very important element affecting the operation, whether you had a two degree curve or 15 degree curve?

A. How do you mean, an important element?

Q. As affecting the operation of the train, the number of cars you could haul, and the speed at which you could operate, and so forth?

A. It depends on what curvature you have and what elevation that curve is set up for, what speed the elevation is in the curve. I don't know the details of it, but the maintenance of way people, the engineering department, they set up the elevations in curves according to the degree of the curvature.

Q. The greater the curve generally the slower the speed of the train?

A. Yes, sir. We have some yard tracks where you have to just creep around. We don't have anything like that on the main line. There are some pieces of track that have more curvature in them than others, just as there are more grades in some than in others.

Q. The degree of curvature would affect the number of [fol. 199] cars in a train you could haul?

A. I imagine in using dynamometer cars, you would find you could haul less cars on a certain stretch of curvature than you could in another stretch of straight railroad.

Q. The greater degree of curvature the greater maintenance expense of the railroad, the roadbed and the track, isn't that true?

A. I am not in a position to say. That is in a department I have never worked in.

Q. You do know the greater degree of curvature the greater the friction is on the wheels on the track?

A. That is an allowance that is made for the drawbar and wheel friction. That is what the car factor is for.

Q. That would affect your tonnage rating? That is the reason you have this adjustment?

A. Yes, sir. For each car that is handled on the train you would allow this car factor.

Q. So the element of curvature is taken into consideration by your maintenance of way department in determining what trains you can operate over the road and how many cars in a train and at what speed you operate?

A. How many cars per train?

Q. Yes.

A. That would depend on what the dynamometer car test showed.

Q. That element is taken into consideration by your [fol. 1200] maintenance of way department?

A. They find it highly desirable to get away from curves as far as possible, yes, sir.

Mr. Stadell: That is all.

Exam. Trezise: If there are no further questions, we will adjourn until two o'clock, and you may be excused, Mr. Lynch.

(Witness excused.)

(At 12:30 o'clock P. M. recess taken to 2:00 o'clock P. M.)

Afternoon Session

The hearing was resumed pursuant to recess:

2:00 o'clock P. M.

Exam. Trezise: All right, gentlemen, when you are ready we will proceed.

Mr. Hunter: Mr. Whalen, please.

W. J. WHALEN was sworn and testified as follows:

Direct examination.

By Mr. Hunter:

Q. Will you give your name, occupation and business address, please?

A. W. J. Whalen, superintendent of the La Crosse River Division of the Milwaukee road, headquarters at La Crosse, Wisconsin.

Q. Mr. Whalen, you are testifying here on behalf of the Milwaukee Railroad trustees?

A. Yes, sir.

Q. And will you state briefly your railroad experience? [fol. 1201] A. Thirty-seven years of service with the Milwaukee road and the last twenty years of that service being in the operating department as a trainmaster and superintendent, assistant superintendent.

Q. Have you had any experience on the Terre Haute division of the Milwaukee road?

A. I was superintendent on that division for four years.

Q. Is that the division that serves the coal fields in Indiana?

A. Yes, sir.

Q. What coal fields does the Milwaukee serve in Indiana?

A. The Linton field and the Clinton field.

Q. It serves none of the coal fields in Illinois?

A. No, sir.

Q. What other divisions have you had experience on?

A. Assistant superintendent on the Iowa division between Savanna, Illinois, and Omaha; superintendent on the division between Chicago and Savanna, and also from Savanna to La Crosse via Dubuque, and on the line from Minneapolis to Mobridge, South Dakota, and on the line between Milwaukee and Minneapolis, with the diverging lines; and also on the line to Davenport, Rock Island and Moline on the Illinois and also the line on the Iowa side of the river.

Q. Are you familiar with the operating conditions encountered in transporting coal from the Indiana coal fields served by the Milwaukee to points in Northern Illinois and [fol. 1202] Southern Wisconsin and Eastern Iowa involved in this proceeding?

A. Yes, sir.

Q. Will you go ahead in your own way, Mr. Whalen, and tell us first how coal would be handled from your points of origin in the Brazil-Clinton field destined to the so-called suspended points, on the one hand, and then compare it with the transporting of coal to the comparative points on the other hand.

A. Coal from the Brazil-Clinton field on the Milwaukee road is handled into West Clinton, Indiana, where we have a classification yard. That coal is then handled to Chicago via the Terre Haute division of the Milwaukee road, that is, to Bensenville yard, which is our Chicago terminal.

Q. Will you refer to Exhibit 6, and if the parties will refer to Exhibit 6 I think they will be able to follow Mr. Whalen better.

A. The coal is handled from West Clinton, Indiana, along the line shown in green, through the terminal Faithorn, which is 121 miles north of West Clinton, thence to Bensenville terminal, a distance of approximately 145 miles, which is the Chicago terminal of the Milwaukee railroad.

Then coal for points Byron, Forreston, Freeport, Rockford, is handled westward from Bensenville on the line extending from Bensenville to Savanna, Illinois, the Byron coal being set out by the trains operating through that territory at Byron, likewise the Forreston coal set out at For- [fol. 1203] reston. The coal for Freeport is set out at Kittredge and handled by a Davenport-Milwaukee train to Freeport. However, we have one train that handles the coal direct from Kittredge to Freeport, then picks up and continues through to Savanna. That takes care of the suspended points, in so far as Indiana coal is concerned.

Mr. Bather: You didn't mention Rockford. How do you handle Rockford coal?

The Witness: Rockford coal is set out at Davis Junction, then handled by another line which operates north from Mendota through Rockford—or though Davis Junction to Rockford and Beloit.

In so far as the comparative points are concerned, first the Chicago coal is handled direct into our Bensenville yard by our crews from the Terre Haute territory. Then the coal for Beloit is set out at Davis Junction on the Chicago-Savanna line, picked up by another crew and handled with the Rockford coal through Rockford to Beloit. The Davenport, Dubuque and Clinton, also Moline, Rock Island and

Savanna coal are handled on the division from Chicago which passes Davis Junction, and at Kittredge the coal for Davenport, Rock Island, Moline, and at times the coal for Clinton is set out at those points. At other times the Clinton coal is handled to Savanna, thence down the Iowa side of the river to Clinton.

The Dubuque coal is handled to Savanna and there placed on a train which operates from Savanna through Dubuque [fol. 1204] and beyond. The coal for Janesville originating in Indiana is handled north of Chicago on the Milwaukee division to a connection for Janesville; likewise Madison coal is handled in this same manner. Burlington, Wisconsin coal is also handled on the division from Chicago to Milwaukee and set out at Sturtevant, where it is handled to Burlington on a diverging line. I believe that takes in the suspended and comparative points mentioned.

By Mr. Hunter:

Q. Will you explain briefly what class of power the Milwaukee railroad uses in handling these coal shipments from the Indiana fields to the points you have mentioned, all of which I assume are located on the Milwaukee railroad?

A. Correct. The engine used to the greatest extent in the coal territory is what we call our L-3 type engine and we have boosters on them, and they have a 62,000 pounds tractive effort, but with the booster cut in they have 73,485 pounds tractive effort.

However, we do have some engines, but they are in the minority, which have a tractive effort of 57,400. These engines with the boosters will handle from West Clinton, Indiana, the classification yard of the Brazil-Clinton Field, to Hallock, a distance of about 62 miles, a train of 5800 tons; and from Hallock, Illinois, to Faithorn, Illinois, a distance of about 61 miles, will handle a train of 6400 tons; then from Faithorn, Illinois, to Bensenville, our Chicago yard, either [fol. 1205] the engine with the 57,000 pounds tractive effort, or the engine with the 62,000 pounds, without the booster, or 73,000 with the booster, will handle a train of 90 cars of mixed loads and empties, as the grades do not affect us, but it is a 90 to 95 car train that is operated in that section.

Q. Now, these tonnage ratings you have referred to, are those actual ratings?

A. Those are actual, and I would say that the tonnage figures I gave, in my experience down there, are handled

90 to 95 per cent, in so far as all northward trains operated are concerned.

Q. Now, what is the other tonnage rating referred to here by some of the other witnesses? You heard the testimony this morning of Mr. Pearson of the Burlington and Mr. Lynch of the Illinois Central.

A. Well, a factor tonnage is a tonnage some railroads use. However, we don't use it. That is an added percentage which they give depending upon the length of the train, figuring some wheel resistance in there. However, the tonnage figures that I gave are the tons that the engine is capable of handling and usually does handle.

Q. Now, Mr. Whalen, does the Milwaukee railroad operate any passenger service on its Terre Haute branch up into Chicago?

A. From West Clinton, the terminal we have been speaking about, to Chicago there is no passenger service operated on that line.

Q. Will you continue.

[fol. 1206] A. Then from Bensenville to Savanna we have the S-2 type locomotive, which is both a powerful and a high speed locomotive, with a tractive effort of 70,816 pounds, and on that division we handle with that type of engine 4500 tons; and with the L-3 type of engine, without the booster, 3350 tons. Then from Ashdale, which is the point we leave our east and west line to go to Davenport, Rock Island and Moline——

Q. Mr. Whalen, before you get to that, the line from Chicago to Savanna is a main double track line?

A. Main line, double track, high speed track.

Q. How about the Terre Haute division?

A. The Terre Haute division, that has the necessary amount of double track to furnish a good operation. We have intermittent stretches of double and single track in order to take care of the traffic that we have.

Q. Go ahead.

A. From Ashdale to Nahant, which is the route handled for Rock Island, Moline and Davenport coal, we operate the L-3 type of locomotive handling 3950 tons. Then we also have this line——

Q. How many cars will an L-3 handle?

A. Well, those are mixed trains, of course, and I would say that you would figure about 100 cars in that 3950, figur-

ing that there is both mixed loads and empties in a train that is operating in that territory.

[fol. 1207] Q. Before we overlook it, does the Milwaukee handle any solid train loads from the Indiana fields?

A. We start out in some cases with solid trainloads of coal, but very few of the trains reach the north terminal Faithorn with solid trainloads, as we try to line up our trains so they can pick up at interchange points and make the pick up most economically. Then the Savanna coal continues through on the line from Chicago to Savanna, and then from Savanna to Dubuque, that being a water grade, with a smaller type of locomotive, having a tractive effort of about 54,000. We can handle up to 6,000 tons on that line.

Then on the line from Davis Junction to Rockford we can handle 5,000 tons; from Rockford to Beloit, 3,000 tons; continuing from Beloit to Janesville, 2800 tons. Then on the coal going to Burlington, that is handled on the main line trains, handling up to 4500 tons, as far as Sturtevant.

Q. Coal to Beloit is handled through Rockford from the Indiana fields?

A. That is correct.

Q. Is it handled the same way from the Illinois fields?

A. The Illinois fields, some of that coal is handled via the north line.

Mr. Bather: What is the north line?

The Witness: The north line?

Mr. Bather: Yes, sir.

[fol. 1208] The Witness: Your Rockford coal is all handled through Davis Junction, but you have some Beloit coal that moves through Rondout and over in that direction.

Mr. Zoll: Did you say that most of it moves through Davis Junction?

The Witness: That is correct.

Mr. Zoll: To Beloit.

By Mr. Hunter:

Q. Through Davis Junction and Rockford to Beloit?

A. Yes, sir.

Mr. Bather: What about coal delivered to you by the Illinois Central at Mendota?

Mr. Hunter: We are coming to that. We covered the Indiana movement first. Then we will come to Illinois. We might handle it right now.

The Witness: Your Indiana coal, I would say, very close to 100 per cent is handled via Rockford, the same as your Illinois coal is, through Davis Junction and Rockford to Beloit.

By Mr. Hunter:

Q. And very little would be handled by the north line through Sturtevant?

A. That is riglit, but considerable for Janesville.

Q. Have you told us about the power used north of Rockford?

A. We use the L-2 locomotive with 54,700 tractive effort. They are used from Davis Junction to Rockford and to Beloit, to Janesville.

[fol. 1209] Q. Have you explained about the power that is used if Indiana coal is handled by the north line to Sturtevant?

A. That is right.

Q. You have gone into that?

A. Yes.

Q. How would the Milwaukee handle Illinois coal destined to the suspended and comparative points?

A. Illinois coal for Byron——

Q. Where would the Milwaukee receive it?

A. They would receive that at Mendota and handle it to Davis Junction and then west on our Chicago-Savanna line to Byron. Forrestón would be the same. Freeport would be the same as I have told you with reference to the handling of Indiana coal from Davis Junction west. Rockford would be handled from Davis Junction north to Rockford. In fact, the Illinois coal destined to Rockford, Beloit, Savanna, Dubuque, Davenport, Rock Island, Moline, Clinton, Freeport, from its arrival at Davis Junction, would receive the same handling as the Indiana coal destined to those points. That is from the arrival of the Illinois coal at Davis Junction.

Mr. Bather: Mr. Hunter, I am not quite clear on that answer. Do you handle all of that Illinois coal through Davis Junction?

The Witness: By far the biggest percentage is received at Mendota. There is some received at Bensenville and [fol. 1210] occasionally a few cars at Spaulding where the

E. J. & E. connects. But what I was getting at was when this coal from the south reaches Davis Junction, it is put in the same trains, on practically the same trains, should be the same trains as the Indiana coal moving into these various points.

Mr. Bather: Yes, but I am talking about the destination points. Do you handle all of that coal into Davis Junction and reclassify it there?

The Witness: From the south you mean?

Mr. Bather: Yes.

The Witness: Yes.

Mr. Zoll: Right there, Mr. Hunter, might I ask one question on that same line.

Mr. Hunter: Yes.

By Mr. Zoll:

Q. You say you get coal from the Illinois Central at Mendota?

A. That is right.

Q. Do you get any at Forreston?

A. We get some coal at Forreston, that is right.

Q. Very much?

A. No, I wouldn't say there is a large amount. From my experience there, I wouldn't say it is very heavy.

By Mr. Hunter:

Q. Now, Mr. Whalen, will you compare the operating conditions in transporting coal from the Indiana points of origin located on the Milwaukee railroad, on the one hand, [fol. 1211] with the operating conditions in transporting coal originating in Illinois destined to the suspended and comparative points, on the other?

Mr. Stadell: You mean originating on the Milwaukee?

Mr. Hunter: There is no coal that originates in Illinois on the Milwaukee. The Milwaukee doesn't serve any points of origin in Illinois.

Mr. Stadell: You are asking him to compare the operating conditions on coal originating in Indiana on the Milwaukee going to the compared and suspended points with the operating conditions on other railroads in Illinois which transport coal from the Illinois mines to those points? Was that your question?

Mr. Hunter: I will put the question this way to amplify it.

Q. Mr. Whalen, will you compare the operating conditions in transporting coal from the Indiana origins, on the one hand, as compared with the operating conditions in transporting coal from the Illinois origins which is handled by the Milwaukee railroad from points of connection?

Mr. Bather: To where?

Mr. Hunter: To the suspended and compared points, on the other hand.

Mr. Stadell: And this is only over the Milwaukee?

Mr. Hunter: That is right, from the points of connection. [fol. 1212] The Witness: Well, from Mendota, where a good part of our Illinois coal is received in interchange, to Davis Junction our L-2 type locomotive, 54,000 tractive effort, handles 3,000 tons. That same locomotive in the Indiana territory to Bensenville would handle about 4500 tons, that is, the same locomotive traveling from the Indiana territory to Chicago as compared with the one from Mendota. But then when the coal gets to Davis Junction, the coal is handled by the same trains and in the same manner, whether it is Illinois coal or Indiana coal.

Exam. Trezise: Meaning just what there?

The Witness: Coal destined north and west of Davis Junction, arriving at Davis Junction from the Illinois interchange at Mendota, is switched right into the trains that are then handling Indiana coal for points north and west of Davis Junction.

Mr. Bather: Do you handle any Kirkland coal on that through Davis Junction?

The Witness: Due to the contract we have, we handle very little revenue coal via the Chicago, Milwaukee and Gary Railroad, which is what you refer to.

Mr. Bather: I am talking about your line from Davis Junction to ~~Kirkland, do you~~ handle any coal from Southern Illinois over that line?

The Witness: Now from Bensenville to Davis Junction via Kirkland we handle practically all of the revenue coal [fol. 1213] produced in Indiana for points north and west of Davis Junction, and whatever amount of Illinois coal is received in interchange at Chicago or in Spaulding.

Mr. Bather: I am speaking of your Indiana coal now, say to a point like Kirkland, how far east from Davis Junction do you handle coal to Davis Junction?

The Witness: How far east?

Mr. Bather: Yes.

The Witness: All of our coal is handled into Chicago and west to Kirkland and Davis Junction, with the exception of company coal, and a small amount of commercial coal, which is handled from Delmar through Joliet, Aurora, and to Kirkland, and thence to Davis Junction.

Mr. Bather: All right.

By Mr. Hunter:

Q. Now, Mr. Whalen, are the transportation conditions encountered in the movement of coal from Indiana to these points that we have been talking about as favorable as the transportation conditions encountered by the Milwaukee in handling Illinois coal from the points of connection to these destinations?

A. Well, the Mendota to Davis Junction railroad, which is a railroad over which a good portion of the Illinois produced coal must move, is not as favorable a railroad to move over in so far as handling tonnage is concerned, as the Terre Haute line.

[fol. 1214] Q. You heard the testimony of Mr. Pearson of the Burlington and of Mr. Lynch of the Illinois Central this morning, did you not, with respect to operating conditions encountered by the Burlington and the Illinois Central in transporting coal from their points of origin to these destinations, did you not?

A. Yes, sir.

Q. Could you compare or discuss briefly the conditions encountered by the Milwaukee in handling coal from the Indiana fields to these destinations as compared to the operating conditions described by Mr. Pearson and Mr. Lynch?

A. Well, in so far as the movement of Illinois coal from Mendota to Rockford is concerned, our operations and the Burlington's are almost the same, because we operate over a joint track the greater part of that distance. In so far as our operation in Indiana is concerned, from what I gained from the information, we are in a little more favorable position, I believe, than the Burlington, because of the fact that they indicated engines with 81,000 tractive effort were handling trains of approximately 6500 tons; whereas we use 73,000 tractive effort and are able to handle trains from Hallock to Faithorn of 6400 tons. We have three grades in excess of some of the grades that they

referred to. However, we get a run for some of those grades and for that reason are able to handle a heavier train. They referred to some grades of 1.6 per cent. However, .5 is our ruling grade from the Brazil-Clinton field into the [fol. 1215] Bensenville area. From Bensenville to Savanna we have some 1. per cent grades on our double track main lines, but it is a high speed railroad, and, in fact, a good part of it is 90 mile an hour track, and our coal is put in with other time freight and receive a fast move across there, rather than a heavy tonnage train movement.

Q. Have you any comment with respect to the Illinois Central's operating conditions compared with those encountered by the Milwaukee in moving coal from the Indiana fields?

Mr. Stadell: Now, I object to the witness making any comparison here between operating conditions on the Illinois Central or the Burlington and the Milwaukee. He hasn't been shown to be competent to testify with respect to the operating conditions on those railroads.

Mr. Hunter: He testified he heard Mr. Lynch's testimony.

Exam. Trezise: He can testify about the figures that are in the record. If he has any comparisons to make out of the testimony that was given, I think that would be proper, if he can make comparisons with them.

Mr. Stadell: If he is confining the comparison solely to what has been testified to, using the facts or alleged facts and testimony of those witnesses as the basis for his testimony, then I won't object.

Exam. Trezise: That is what he will do, I understand, and use his judgment.

[fol. 1216] Mr. Stadell: He is not expressing any separate facts as to operating conditions on those railroads.

Mr. Hunter: That is correct.

The Witness: I am not familiar with the operation, only from the testimony I heard, and I made notes of the Burlington testimony. I did not make notes of the Illinois Central, but from what I heard testified, I would say we are somewhat comparable.

By Mr. Hunter:

Q. You are familiar with the operating conditions north of Rockford as well as the operating conditions to Rockford?

A. That is right

Q. How do the operating conditions north of Rockford compare with the operating conditions to Rockford?

A. Well, on our tonnage, we don't handle the heavy trains north for the reason——

Q. North of Rockford, you mean?

A. To Madison and into Janesville, inasmuch as you don't have as much traffic. But we use the L-2 type of locomotive, and they can handle between 2,800 and 3,000 tons in there. So the business can be handled if available.

Mr. Bather: Now, that statement is too general, Mr. Examiner. Your tonnage from Davis Junction to Rockford greatly exceeds your tonnage from Davis Junction to Beloit.

The Witness: I was speaking of north, from Rockford [fol. 1217] north it is 2,800 to 3,000.

Mr. Bather: If you had it.

The Witness: That is right; while from Davis Junction to Rockford 5,000 tons is the most that can be capable of handled.

By Mr. Hunter:

Q. Will you state whether the operating conditions are as favorable north of Rockford as they are to Rockford?

A. Generally about the same. There is a little more grade condition which limits it or causes the difference between the 5,000 tons handled from Davis Junction to Rockford as compared with up to 3300 from Rockford to Beloit and Janesville.

Q. Have you anything else to add with respect to these matters that you have discussed?

A. I don't believe so.

Mr. Hunter: We tender Mr. Whalen for cross-examination.

Mr. Zoll: Mr. Hunter, could I ask just one question?

Mr. Hunter: Yes.

By Mr. Zoll:

Q. I wondered whether the Milwaukee serves DeKalb?

A. DeKalb, yes.

Q. Do you handle any coal there?

A. Yes, we handle coal for DeKalb, as a general rule, handled over the line from Delmar through Joliet to DeKalb. Some coal is handled from Davis Junction, if it is handled through Mendota to Davis Junction, then the [fol. 1218] crew handles that from Davis Junction back to DeKalb.

Mr. Bather: That would be coal originating on the Illinois Central or C. B. & Q.?

The Witness: That is right.

By Mr. Zoll:

Q. I didn't hear you as to how you moved your coal from Janesville to Madison, but I assume it is through Rockford?

A. That is right, provided it is received through interchange at Mendota; but if we get it at Chicago, we take it through Rondout and that section.

By Mr. Bather:

Q. Do your rates from Southern Illinois to Madison and Janesville apply through Chicago?

A. I am not familiar with the rates.

Q. Then that would be strictly an operating convenience and not based on tariff routing?

A. I am not familiar with the tariff, but I presume that is what they are based on.

By Mr. Zoll:

Q. Mr. Lynch gave some distances. Now, perhaps you can help me out. Would you know the distance on the Milwaukee from Mendota to Rockford?

A. From Mendota to Davis Junction is 42.5 miles and from Davis Junction to Rockford is 11.8 miles.

Q. Do you have it from Rockford to Beloit?

A. From Rockford to Beloit is about 20 miles—just one minute, Beloit Junction is 20 miles from Rockford.

[fol. 1219] By Mr. Bather:

Q. That is north of Beloit, isn't it?

A. Yes, but your operation—Beloit Junction is only one mile. It would be approximately 20 miles.

By Mr. Zoll:

Q. How about Beloit to Janesville?

A. Beloit to Janesville is 14 miles.

Q. Have you got Janesville to Madison there?

A. 41 miles.

Mr. Zoll: That is all I had, Mr. Examiner.

Exam. Trezise: Cross-examine.

Cross-examination.

By Mr. Moran:

Q. I have one question. Mr. Whalen, on Indiana coal from mines on the Milwaukee as well as Indiana coals from mines on the other roads in Indiana, which is picked up by the Milwaukee in Chicago or Chicago Junction and moved westward on your Savanna line, destined for Freeport, does it all move along that line and back up through Kittredge?

A. That is right.

Q. Or does some move north to Davis Junction through Rockford and Rockton and back to Freeport?

A. The movement goes through Kittredge to Freeport.

Q. None of it moves the other way?

A. None of it.

Mr. Moran: All right, that is all.

By Mr. Vesey:

Q. In other words, over the Milwaukee Rockford is not intermediate to your movement to Freeport then, is it?

[fol. 1220] A. That is right.

Mr. Vesey: That is all.

Mr. Stadell: I would like to ask a couple of questions.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. This map Exhibit No. 6 which you were asked to refer to indicates that the line of the Milwaukee from

Indiana operating through Chicago Heights to Bensenville operates through the Chicago District; is that the way it operates?

A. That is right.

Q. Through the Chicago switching district?

A. That is right.

Q. You made some reference to the coal moving in trainloads from Indiana. The normal operation generally is in mixed trains, isn't it? The coal doesn't move in solid trainloads generally, does it?

A. Not generally, no, sir.

Q. It moves in mixed trainloads with other cars and with other empties?

A. That is right, yes.

Q. That would be true from both Brazil-Clinton and Linton-Sullivan fields?

A. That is right.

Q. The Milwaukee serves mines in the Linton-Sullivan field?

A. Yes.

[fol. 1221] Q. The Milwaukee receives coal within Indiana, does it not, from other railroads that originate the coal in the Indiana groups, Brazil-Clinton and Linton-Sullivan?

A. Yes, we get some coal, but it is a small portion of the coal we handle.

Q. And the gathering service for that coal would be performed by the railroad originating it, such as the Pennsylvania or the New York Central?

A. I don't believe we get any, Mr. Stadell, from the Pennsylvania. I don't know of any. We get a little from the Monon at Midland and we get some from the lines at Terre Haute, a small amount. But they would pick up the coal and handle it to our interchange point.

Q. There is a route from mines, as I understand it, in the Brazil-Linton District served by the Pennsylvania railroad that applies via Beehunter and the Milwaukee; would you handle any coal over that route?

A. As I recall it, we wouldn't interchange over a car of any commodity to the extent of every three or four days. We don't get any interchange to amount to anything.

Q. Any coal that would originate then on the Pennsylvania would probably be sent over some other route than the Milwaukee?

A. I believe Pennsylvania is handled to Effner and then to Webster and then on to our line.

Q. Now, you referred to the fact that to Rockford, I think [fol. 1222] it was, from Davis Junction to Rockford that you could haul 5,000 tons and then you reduced the tonnage from Rockford to Beloit to 3,000, and then again from Beloit to Janesville to 2800. Is that reduction due to the grade conditions that you encounter there?

A. That is the biggest factor.

Q. And in talking about the grades and making some comparison between the grades on the Burlington and the grades on the Milwaukee, you stated that you were in somewhat better position because you could get a run for these grades. Would you say in view of that statement that the location of the grades was important in determining the operating conditions on a given railroad?

A. Yes.

Q. In other words, whether the grade was located at the foot of a hill or at the bottom of a hill or on top of a hill, that is, I mean on top of a grade or at the bottom of the grade?

A. One thing that enters into it is the momentum you have in approaching the grade. If you are slowed down by other grades, you don't have the momentom which carries you up a good part of the hill, if you actually have a good run.

Q. So that a .5 per cent grade on one railroad, merely to compare a grade of .5 per cent on one railroad with .5 per cent grade on another railroad would mean nothing unless you knew something about the location of those grades?

[fol. 1223] A. Together with what tonnage they are actually handling over it.

Q. You referred to your line from Bensenville to Savanna, I think it was, being a high speed railroad and you could operate 90 miles an hour. You did not mean to imply you are operating your freight trains at 90 miles an hour?

A. That is the maximum speed for passenger trains.

Q. Your streamliners?

A. That is right.

Q. And your freight trains, of course, would operate at a much lower rate of speed?

A. I believe it is 70 miles, if my memory serves me right —no, 60.

Q. That is your schedule?

A. Yes.

Q. All the way through from Bensenville to Savanna?

A. From Bensenville to Savanna—well, you have a few minor restrictions, but the 60 miles per hour from Bensenville to Savanna applies, with the exception of the restrictions of municipalities or possibly a sharp curve or something that might enter into it; I don't know of any there, but you are going through your towns and that would restrict you.

Q. And you made some remark about there being no passenger service from West Clinton to Bensenville. I take it from that, that you consider the existence or non-[fol. 1224] existence of passenger service as another important element to be taken into consideration in judging your freight train conditions or operating conditions?

A. It is helpful.

Q. In order to draw a proper comparison between the operating conditions on one railroad versus those on another railroad you would have to know something about the amount of passenger service operated on those two railroads?

A. That would enter into it.

Q. What railroads does the Milwaukee interchange with at Mendota?

A. The Illinois Central and C. B. & Q.

Q. Those are the only two?

A. Yes.

Q. Where would you receive coal from other lines that might originate in the Princeton, Indiana district going to the suspended Northern Illinois points?

A. Well, we should receive it at Chicago Heights, I presume, from the C. & E. I. and in our Chicago terminal, at the Bensenville yard.

Q. From one of the Belt lines?

A. Yes, I believe so.

Q. Those Belt lines wouldn't originate it; it would originate on some trunk line railroad and be brought into the Chicago district?

[fol. 1225] A. That is right.

Q. You referred to tonnage rating here of about 4500 tons, I think it was, from your West Clinton yard to Bensenville. Approximately how many solid cars, if you had a solid trainload of coal, how many cars would that be, taking your gross tonnage of car content?

A. It would be about 65 cars, I would say. That 4500 tons reference though was made with reference to the L-3 engine, which is not a regular operator there.

Q. What would be the number of cars you could haul with the L-3 type approximately from West Clinton?

A. I would say between 85 and 90.

Q. And that is considering a solid trainload of coal, not a mixed trainload?

A. Pretty much a solid trainload.

Mr. Stadell: That is all I have. Thank you very much.

Mr. Cardy: Just one or two questions.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Whalen, as I understand it, your assembly yard in the Clinton district is West Clinton, is that right?

A. That is right.

Q. About how many mines do you serve in your Clinton district?

A. About five.

Q. And about what is the average distance of the mines from the assembly line?

[fol. 1226] A. We have one located within possibly a thousand feet of our yard and two that would be about five miles, and the fourth and fifth one would be about thirteen miles.

Q. Now, the C. & E. I. and other roads also serve that district. Do you know about how many mines are located in the district which are off your line and not served by the Milwaukee, or have you that knowledge?

A. I just know of one that is in that territory that is served by the C. & E. I.

Q. And what is the assembly yard for their coal? Is it Jackson yard?

A. That is right.

Q. About how far is that mine from the Jackson yard?

A. I would just have to make an estimate; probably 15 miles.

Q. Now, the situation with respect to the Linton district, where is your assembly yard there?

A. In the Clinton district?

Q. No, in the Linton.

A. In the Linton district, Latta, Indiana.

Q. How many mines there?

A. I would say in the neighborhood of 22, 23.

Q. Can you give us the approximate distance?

A. I would say the farthest are probably 14 to 15 miles, and some of them much closer, in fact, right near the yard.

Q. Now, the C. M. St. P. & P. from the Linton district to [fol. 1227] Chicago Heights parallels the C. & E. I. practically?

A. Yes, sir, that is correct.

Q. The distance is about 20 miles and runs through substantially the same territory, is that true?

A. North of Terre Haute, yes.

Q. On traffic, we will say, originating on the C. & E. I., going to the suspended territory, some of it is delivered to you at Chicago Heights and delivered to destination, is that right?

A. Yes, sir.

Q. Now, will you state approximately what is the coal tonnage handled from the Indiana mines on the C. M. St. P. & P. going to Chicago, about what is the tonnage of coal compared with other traffic?

A. Oh, that would have to be purely a guess.

Q. In other words, the piece of track between Linton and Chicago is the old Terre Haute and Southeastern which is strictly a coal carrying line, isn't that true?

A. It was, but it has changed its picture.

Q. In other words, since the Milwaukee acquired it, as shown by some of these facts, 99 per cent of the traffic on the Terre Haute and Southeastern was coal at the time you acquired it, is that substantially true?

A. I believe you are probably nearer right.

Q. But since then it has changed and you couldn't give us [fol. 1228] the percentage now?

A. No. We do heavy time freight business down there and I wouldn't say just what percentage.

Q. Where do you deliver traffic destined to Dixon, Illinois, what connecting line?

A. I presume Forreston would be the connecting point. I am not certain.

Q. What would be the road, if you know?

A. I am not certain about that.

Mr. Cardy: All right, that is all.

Mr. Stadell: I have just a couple of other questions, if I may, in view of Mr. Cardy's questions.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. You said one of the mines in the Brazil-Clinton District was approximately 13 miles from the West Clinton yard?

A. Yes.

Q. How do you perform that service? Is that a switch engine service or a road haul engine or what?

A. We have what are known as combination yard and mine runs, and they classify the trains and then go out and get this business, whatever is available.

Q. You referred to some of the mines in the Linton-Sullivan Field being 14 miles from Latta; how close is the nearest mine to Latta?

[fol. 1229] A. To Latta?

Q. Yes.

A. We have one at Coalmont.

Q. Could you give us the distance from some of these several mines you stated were in the Linton-Sullivan District to Latta?

A. I believe I can come quite close, although I haven't the exact information. We have a mine at Coalmont which is 4 miles from Latta; and we have mines about 7 miles west and south.

Q. How many mines?

A. I think there are three or four in there. Then we have Vigo mine, 5.9 miles; Minnehaha, 6.8 miles; Glendora is about 8 or 9 miles; Robinhood I would judge is about 7½ miles. Then we have the Central City, which is about 2 miles, I believe, south. Then we have another one, I can't recall the name offhand, about 3 miles south. Then we have the Maunee mine about 10 miles, and there are a couple of new mines which have been put up there since I left there, and I can't say just where they are with reference to this Maunee mine. Then north we also have Keller and Blackhawk mine, which I believe are considered in the Brazil-Clinton Field.

Q. They are in the Linton-Sullivan District.

A. Linton-Sullivan?

Q. Yes, they are clear up at the north end of the district.

A. I want to qualify that with reference to those two mines. They are not taken to Latta, but those are picked [fol. 1230] up and handled through as north trains or some cars taken off and others added to at West Clinton. But they don't go into the Latta classification.

Q. And is the service from all of these mines performed by switch engines or by roadhaul engines?

A. They are like the Clinton district yards, they are combination yard and mine run engines. The only mines handled with road crews at any time are the Keller, Maunee 20 and Blackhawk mines.

Q. Could you give us the grades on any of these lines?

A. Well, offhand, with this same type of locomotive that we handle 5800 and 6400 tons on the north end, we go out of Latta with about 8,000 tons.

Q. That is out of the assembly point?

A. That is from the assembly point, 8400 tons; and due to the fact that it is a descending grade in the direction the traffic is moving, we are able to pick up at Latta or at Keller or at Maunee 20 mine, and Blackhawk, and we have handled as much as 20,000 tons into Terre Haute. Then, of course, a good part of that traffic is destined to local industries at Terre Haute or at Junction points. Then from there north we use this same L-3 with a booster and it is able to handle 5300 tons to West Clinton.

Q. What I was interested in getting was the grade on these lines running from the assembly yard out to the mines. [fol. 1231] A. There is only one bad grade or one rough grade for a distance of about a mile and a half, as I recall it, and that is on the New Hope, Friar Tuck lead. Otherwise we are able to handle a fairly heavy cut. Now, from Linton to Latta we have handled up to 3200 tons with our mine engines, coming back from the mines.

Q. Could you furnish for the record the grades on these lines from these mines to the assembly point Latta and also to West Clinton?

A. I presume we have those, but I might add that the grade on those doesn't enter into it so much, because you go out and pull in, bring in the mine's business, and it is only the unusual case where you get enough where your grades actually affect your transportation to the extent you have to go back after a second trip.

Q. Will you furnish that information?

Exam. Trezise: Do you wish to furnish that, Mr. Hunter?

Mr. Hunter: I don't see the materiality of it myself. Do you, Mr. Whalen?

The Witness: For example, the grades in the Submarine mine in the West Clinton District, they never do produce enough to put forth the effort the locomotive is capable of putting forth. The same would be true of very many, with the exception of this one territory from Linton to Latta, where I said 3200 tons was all that we were able to handle.

[fol. 1232] Mr. Stadell: Well, I would like to have the record contain that information. If Mr. Hunter doesn't want to furnish it, of course——

Mr. Hunter: You didn't ask for it from the other districts in Illinois, and I don't see what good it would do to have it just from the Indiana fields, that is, to the concentration assembly points. If you have it only from the Indiana field without similar information from the Illinois group, which you didn't request, I don't see what good it would do.

Mr. Moran: I submit from the witness' answers to the last two questions of Mr. Stadell that it is wholly material.

Exam. Trezise: Do you want to furnish it or do you prefer not to furnish it? That is the only question.

Mr. Hunter: Well, I would like to consider that with Mr. Whalen.

Exam. Trezise: Well, you consider that, then.

Mr. Hunter: We will give an answer before we leave.

Exam. Trezise: Do we have any further questions?

Mr. Hunter: I would like to ask one question on redirect, if I may.

Exam. Trezise: All right.

Redirect examination.

By Mr. Hunter:

Q. Mr. Whalen, is the Terre Haute line tangent as a general proposition?

A. Well, to be honest with you, in my thirty-three years [fol. 1233] of experience, I have never seen a railroad with as straight a line as the Terre Haute is in the territory from West Clinton to Faithorn. Two degrees is the heaviest curve we have, and we have about 70 miles of railroad with only .30 net curve in it. It is an unusually straight line.

It is of recent construction and they followed a very good line.

Q. How do the operating conditions on the Terre Haute line to Chicago compare with the operating conditions from Chicago to Savanna?

A. The Terre Haute line is much the better grade and also a straighter line.

Q. And from what you heard of the testimony given this morning by the witnesses Pearson and Lynch, how would you say the operating conditions on the Terre Haute line to Chicago compare with the operating conditions as described by Mr. Pearson and Mr. Lynch on the Burlington and Illinois Central?

Mr. Stadell: I object to that.

Mr. Hunter: I think it is very material, in view of what Mr. Stadell brought out.

Mr. Stadell: I think the Commission will determine the comparative operating conditions, and it is not the province of this witness to take the testimony and draw comparisons and say which of the two is the best. It is up to the Commission. The facts are put in the record for the Commission to make that determination. The question invades [fol. 1234] the province of the Commission and I object to it. We will be here for a week now if they want to have answers to some of these questions.

Exam. Trezise: Your question is being confined to the facts as shown here. The Examiner cannot follow these detailed facts as to the tractive effort and the tonnage ratings and so on, but Mr. Whalen is familiar with those things and I think that unquestionably he can tell how they compare. Now, if he is going to go beyond any testimony that is given in this case, why, of course, he can't express a view as to what the transportation conditions are on the other lines.

Mr. Stadell: I think we should first find out whether he feels that the testimony of these other gentlemen contains enough facts, all of the facts that he would have to have as an expert operating witness to draw a competent comparative opinion.

Mr. Hunter: Will you comment on that last statement, Mr. Whalen?

The Witness: Well, the Burlington witness testified that with an engine of 81,600 pounds tractive effort they were

able to handle from Herrin to Galesburg 6500 tons, and in the Fulton County with the same locomotive to Lewistown 6600 tons. Now, from Hallock to Faithorn with an engine of 73,000 tractive effort, or approximately 7/8ths the tractive effort, we handle within 100 tons of as heavy a train, which would indicate that there is some reason for that, otherwise their engines undoubtedly would have a tonnage [fol. 1235] rating in excess of 6500 tons.

By Mr. Hunter:

Q. Have you answered directly and in a few words the question Mr. Stadell which in effect was, as I understood it, whether the witness——

Mr. Stadell: I will withdraw the question.

By Mr. Hunter:

Q. (Continuing:) —whether the witnesses Pearson and Lynch gave sufficient operating facts for you to make an intelligent appraisal of the situation on their respective railroads?

A. I noted the Burlington's figures for my own satisfaction, and I would say to make a comparison with them, yes, they have, and I have gotten enough out of them to make a comparison based only on the figures they gave this morning, comparing it with our own operation.

Q. How about Mr. Lynch?

A. Yes, only I didn't note it. As he passed along I felt we were as favorable as they were, if not more so, in the operation. Then from Aurora to Rochelle on the Burlington, with an engine of 80,000 tractive effort, they handle 3300 tons, while we with an engine of 70,000 tractive effort handle 4500 tons. Then to Amboy with an engine of 80,700 tractive effort they handled 3200 tons. We don't have an engine that heavy in any of the service in that territory, but proportionately our rating and tonnage handled is heavier.

Mr. Hunter: That is all.

[fol. 1236] Exam. Trezise: Any further questions?

Recross-examination.

By Mr. Stadell:

Q. Do you know what the actual maximum tonnage is that is being handled by the Burlington over these lines or the Illinois Central?

A. Just from the testimony.

Q. You have no personal knowledge of it?

A. No, I have no knowledge except what I gained here this morning.

Q. Are you handling the maximum tonnage rating from Linton to Latta and to West Clinton?

A. We operated during the period I was there, 95 per cent of the trains were operating with the tonnages I have given you. There is always sufficient business down there to fill your trains, except possibly during a shut down on account of the mines being closed.

Exam. Trezise: Well, is the tonnage that you gave them the maximum? I think that is what he is driving at.

The Witness: That is the maximum and that is the general tonnage handled by these engines.

By Mr. Stadell:

Q. Do you consider the element of curvature important in affecting the operation of trains, straight trains?

A. There is a formula of the resistance by curvature which indicates that 10 degrees curve, I believe, gives you [fol. 1237] the equivalent of .4 of 1 per cent of grade; but on the main lines very few of the railroads have that, except in a congested area.

Q. You have no personal knowledge of the operating condition over the Burlington or the I. C. from the Southern Illinois District to the points involved in this case, have you?

A. Only from what I heard in the testimony.

Q. And all of the statements you made and opinions you gave here on the comparative operating conditions over those roads and the Milwaukee was based solely on what you heard here this morning through the testimony of the witness for the Burlington and the witness for the Illinois Central Railroad?

A. That is right, the testimony given here.

Mr. Stadell: That is all.

Exam. Trezise: Any further questions? (No response.) You may be excused, Mr. Whalen.

(Witness excused.)

Exam. Trezise: We will take a few minutes' recess.

(Recess taken.)

Exam. Trezise: All right, gentlemen, when you are ready we will continue.

Mr. Hunter: Mr. Examiner, during the recess we have considered Mr. Stadell's request for information as to the grades on the mine tracks of the Milwaukee in Indiana, that is, the grades from the mines to the main line. As Mr. [fol. 1238] Whalen explained, we do not have the tonnage ratings for the mine tracks, as we coordinate the pickup of coal with the delivery of empties to the various mines; and then too, the question of curvature is very important, just as important as the grad Information of that kind was not furnished with respect to the Illinois mines and we do not believe it would serve any purpose to go into that with respect to the Indiana mines, and we couldn't use it for comparative purposes.

Exam. Trezise: All right. Proceed, Mr. Cook.

Mr. Cook: Mr. Fischer, please.

Mr. Stadell: I would like to ask, you refuse to furnish that information then, is that right, Mr. Hunter?

Mr. Hunter: Under the circumstances I have outlined, yes. If you had it for the Illinois mines, I would have no objection to giving it to you for Indiana.

Exam. Trezise: Proceed, Mr. Cook.

C. H. Fischer was sworn and testified as follows:

Direct examination.

By Mr. Cook:

Q. State your name and address, please.

A. C. H. Fischer, Chicago.

Q. What position do you hold with the C. & E. I. railroad?

A. Superintendent of transportation.

Q. How long have you been connected with the C. & E. I.?

A. Thirty-four years.

[fol. 1239] Q. How long have you been superintendent of transportation?

A. Nine years.

Q. I show you a map, Mr. Fischer, which has been marked Exhibit No. 18 and ask you if this map was prepared under your direction?

A. It was.

(Respondent's Exhibit No. 18, Witness Fischer, marked for identification.)

By Mr. Cook:

Q. Are you familiar with the operation of the C. & E. I. from various coal districts on its line?

A. I am.

Q. I wish you would explain, please, in a general way your Exhibit No. 18.

A. So far as concerns the coal, starting over at the left-hand side, we have mines at Livingston and Nokomis, Illinois. Nokomis is a short distance from Livingston, about 35 miles north. Then we have mines in the West Frankfort region, which we call the Southern Illinois. We have mines in the Danville district. We have mines at Clinton, Indiana, and at Princeton, Indiana. There are mines in the Sullivan district, but at the present time none of them are working on our line.

Q. What are the distances shown on this exhibit?

A. Those are the distances from the principal coal loading points on our line to Chicago, from Princeton, West Frankfort, Livingston, Clinton, and Danville.

[fol. 1240] Q. Does this exhibit indicate a portion of your line that is double track and a portion that is single track?

A. Yes, the double track line is clearly indicated there and the single track likewise.

(Respondent's Exhibit No. 18, Witness Fisher, received in evidence.)

By Mr. Cook:

Q. I show you an exhibit marked No. 19 and ask you if this exhibit was prepared under your direction?

A. Yes, that was prepared under my direction.

(Respondent's Exhibit No. 19, Witness Fischer, marked for identification.)

By Mr. Cook:

Q. Does this exhibit contain certain information in regard to the operation of mines on the line of the C. & E. I.?

A. Yes, it shows the distance to Chicago, the miles of frack, divided between single and double; how we move the coal; the number of break-up points; the maximum grades encountered; the maximum curves encountered; and the engine rating.

Q. And that information is shown for all of the mines located on the C. & E. I., is that correct?

A. That is correct.

Q. Have you any further information you wish to offer in regard to the operation of the C. & E. I. in connection with these mines?

A. No, nothing particularly. I think these two exhibits [fol. 1241] illustrate in a fair way just how we handle this coal and the problems that we encounter.

(Respondent's Exhibit No. 19, Witness Fischer, received in evidence.)

Mr. Cook: That is all, Mr. Examiner.

Cross-examination.

By Mr. Bather:

Q. Mr. Fischer, on your Exhibit No. 18 you show what I assume to be the transportation conditions in Chicago. All of the coal moving to the suspended territory does not move through Chicago, does it?

A. No, not necessarily.

Q. At what other junctions do you deliver coal going to Rockford?

A. I would say Momence; there is a possibility of some through Chicago Heights. Coal going to Milwaukee would generally be delivered through Momence.

Q. Where would you deliver coal going for I. C. delivery?

A. That would come through Chicago.

Q. Is the movement of coal from the Brazil-Clinton District on your line comparable with the movement of coal from the same group on the Milwaukee?

Mr. Cook: I object to that, Mr. Examiner. This witness is not qualified to testify as to operations on the Milwaukee.

By Mr. Bather:

Q. Did you hear the testimony of the operating witnesses for the Milwaukee?

[fol. 1242] A. Yes, I heard Mr. Whalen's testimony.

Mr. Bather: I think that is pertinent, Mr. Examiner.

Exam. Trezise: Do you object to his giving his opinion on it?

Mr. Cook: Not if he knows, I do not.

The Witness: I don't know that Mr. Whalen went into detail to such an extent that I would be furnished the information to enable me to answer your question.

By Mr. Bather:

Q. Then you don't know?

A. No, I wouldn't answer that.

Mr. Bather: That is all I have.

Exam. Trezise: Any further questions?

Mr. Stadell: I have just one question.

Exam. Trezise: Mr. Stadell.

By Mr. Stadwell:

Q. Did you hear Mr. Whalen testify that the Milwaukee Railroad could handle 12,000 tons in a train down hill from Keller and Blackhawk to Terre Haute, Indiana?

A. Yes.

Q. The C. & E. I. could handle 12,000 tons of freight down hill also, couldn't it?

A. That is right.

Q. Most any railroad could?

A. That is right.

Mr. Stadell: That is all.

By Mr. Cardy:

Q. How many mines in your Brazil-Clinton District?

[fol. 1243] A. There are four mines operating in the Brazil-Clinton District area.

Q. About what is their distance from the assembly yard?

A. I would say from 5 to 10 miles.

Q. How many in the Linton-Sullivan District?

A. There are no mines working there at the present time.

Q. How many mines did you have and where were they a short time ago or a few years ago?

A. A couple of mines.

Q. How many?

A. Two.

Q. That was a very large district, wasn't it, at one time?

A. At one time we had 20 mines in that area.

Q. What is the distance of these two mines that are working now from the assembly yard which is Seifert, is that correct?

A. Siefert, I would say about 4 miles.

Q. And the traffic is assembled at those two assembly yards which you have indicated and transported northbound to Chicago?

A. That is right.

Q. Or to Momence or Chicago Heights on traffic destined to this territory?

A. That is correct.

Mr. Cardy: That is all.

By Mr. Wood:

Q. Mr. Fischer, are you familiar with the ton ratings [fol. 1244] on these engines listed in your Exhibit 19?

A. Yes.

Q. Do you have them there in any fashion so you can supply them to us?

A. Well, I have shown them in the last column.

Q. Oh, that is your ton ratings?

A. That is right.

Q. What about your tractive effort?

A. Those ratings are for the Mokado engine with a tractive effort of 60,300 pounds.

Q. All of them?

A. Yes, all based on the same size engine.

Q. What was that rating?

A. 60,300 pounds.

By Mr. Hunter:

Q. Mr. Fischer, referring to Mr. Whalen's testimony, he referred to the 12,000 ton movement, as I recall, from the Linton-Sullivan group. Now, does the C. & E. I. have

any mines that it serves or any group of mines in the Linton-Sullivan that produce 12,000 tons a day?

A. As I previously stated, we have at the present time no mines working in that area.

Q. At present you couldn't haul anything like that, therefore?

A. Well, it was a hypothetical question, as I understood it.

Q. Does the C. & E. I. operate any passenger service from its fields in Indiana, the Brazil-Clinton or the Linton-Sulli- [fol. 1245] van, to Chicago?

A. We operate a number of passenger trains through there.

Q. To Chicago?

A. Quite right.

Mr. Hunter: That is all.

By Mr. Bather:

Q. Mr. Fischer, take Marion, for example—do you deliver any coal to connecting lines at West Frankfort for Rockford or Freeport?

A. No, sir.

Exam. Trezise: Are there any further questions? (No response.) If not, you may be excused, Mr. Fischer.

Mr. Cook: I wish to offer Exhibits 18 and 19 at this time.

Exam. Trezise: They are already shown in the record.

(Witness excused.)

Mr. Wood: Mr. Examiner, now that an exhibit and testimony has been offered sohwing curves by one of the carriers, I wonder if Mr. Hunter would now reconsider his statement and accede to that request.

Mr. Hunter: These are main line curves, Mr. Wood, and Mr. Whalen testified about that. But what Mr. Stadell asked for was the curvature—he didn't ask for the curvature, but merely the grade from the mine track spur to the main line. Now, we testified and Mr. Whalen was prepared to testify concerning all of the curves and grades on the main line. This here doesn't purport to [fol. 1246] give you the curves on the mine spurs.

Mr. Stadell: My request was for the grades and the curves on the mine tracks, that is, on the tracks leading from the assembly point in Indiana to the mines; but as I understood

it, Mr. Hunter said they refused to furnish that information.

Exam. Trezise: I think that is understood now.

Mr. Hunter: That is right. But this refers merely to the main line carvature.

Exam. Trezise: All right, gentlemen, we will adjourn until 10:00 o'clock tomorrow morning.

(At 4:00 P. M. June 21, 1943, adjourned to 10:00 o'clock A. M. June 22, 1943.)

[fol. 1247] Morrison Hotel, Chicago, Illinois,
June 22, 1943.

The hearing was resumed pursuant to adjournment, at 10:00 o'clock a. m.

Before R. N. Trezise, Examiner.

Present W. C. Kaylor, Illinois Commerce Commission.

APPEARANCES:

As before.

PROCEEDINGS

Exam. Trezise: All right, gentlemen, let's continue. Are you ready, Mr. Hunter?

Mr. Hunter: Yes.

CHARLES H. LONGMAN was sworn and testified as follows:

Direct examination.

By Mr. Hunter:

Q. Will you state your name, occupation and business address, please.

A. Charles H. Longman, assistant chief operating officer, Chicago & North Western Railroad, 400 West Madison Street, Chicago, Illinois.

Q. What are the duties of your position, Mr. Longman?

A. Supervision of the entire North Western Railroad, in various departments.

[fol. 1248] Q. That is with respect to operating matters?

A. That is right.

Q. And will you state briefly, Mr. Longman, your railroad experience.

A. I have had 35 years in the operating department, starting as a fireman, engineer, road foreman of engines, trainmaster, assistant superintendent, assistant to the general manager, assistant to the vice president, assistant general manager and assistant chief operating officer.

Q. Does the North Western Railway serve any of the origin groups involved in this proceeding, any of the coal mines?

A. They do not.

Mr. Cardy: Mr. Hunter, we just can't hear over here at all.

By Mr. Hunter:

Q. Does the North Western serve any of the points of destination involved in this proceeding?

A. Yes, sir.

Q. Will you name some of them?

A. Well, Belvidere, Rockford, Freeport, Dixon, Clinton, Janesville, Fort Atkinson.

Q. Mr. Longman, the North Western, in handling coal from Illinois, Indiana and West Kentucky mines involved in this proceeding to these points of destination that you have named would receive coal where?

A. Well, at various points, the preponderance of which, [fol. 1249] however, is received at our Proviso yard just outside of Chicago; and we receive coal at Benld, South Pekin, Peoria, Barrington, Illinois, some at DeKalb—or not DeKalb—West Chicago, Sterling.

Q. Will you describe certain typical movements of coal, how it would be handled by the North Western from these points, from Benld to Rockford, for example.

A. Well, starting at Benld, we receive coal from various lines down there: the L. & M., the Illinois Traction, the Big Four, the Wabash. Those cars are put in trains of mixed traffic out of Benld and hauled to Nelson, which is approximately 192 miles, and where they connect with our main line between Chicago and Omaha; and thence to West Chicago, where they are set out and handled by our time freight that operates between Proviso and Freeport. Occasionally that traffic will move on way freights; that is, coal for Rockford.

Q. All the way to Rockford?

A. To Rockford, that is right.

Q. That is tracing a shipment from Benld to Rockford, is it not?

A. That is right.

Q. Now, would you trace that same shipment from that point if it were destined to Beloit, for example?

A. Well, it would go up to Nelson, thence into Proviso yard, switched into our time freight 591 and hauled on our [fol. 1250] Wisconsin Division to Caledonia, and from Caledonia to Beloit over the Madison Division.

Q. Can you point out the differences in transportation conditions that would be encountered in handling those two shipments, one to Rockford and one to Beloit?

A. Just what do you mean?

Q. Are they handled over the same routes or different routes?

A. Different routes.

Q. Different routes?

A. That is the same route as far as West Chicago, where you would set out your Rockford or Freeport cars. The Beloit car would come on into Proviso and be placed in a time freight for Beloit and operate over the Wisconsin Diyision, which operates northwest of Proviso.

Q. Now, you have told us you received shipments at Pekin.

A. That is right.

Q. Will you describe the handling of a shipment from Pekin to another point in Northern Illinois?

A. Well, that would be the same, outside of the fact that we would haul it 98 miles less than we would if we received it at Benld.

Q. Would you describe the handling of a shipment of that kind to Dixon or DeKalb. You described one handling to Rockford. We would like to know how you handle a shipment to either Dixon or DeKalb, coming from Peoria?

[fol. 1251] A. Coal coming from Peoria we receive at our Adams Street yard. It comes from the M. & St. L., the Alton, the T. P. W. and the Illinois Central. That is hauled up to Nelson and for Dixon it is set out at Nelson and handled by a switch run to Dixon. To DeKalb, it is taken through over the main line of the Galena Division and set out at DeKalb.

Q. Now, Mr. Longman, will you describe the handling by the North Western of a coal shipment received at Chicago destined to a point in Northern Illinois and then compare

the handling of a shipment of coal received by the North Western at Chicago, handled to a point in Southern Wisconsin, say, like Beloit.

A. Well, we receive coal at Proviso from the I. H. B. and the Chicago Belt, B. & O. C. T. We pick up some from the Illinois Northern, an occasional car; also direct from the Pennsylvania. These cars are switched into mixed trains at Proviso, whether they are going to Freeport or Beloit. For Freeport, they are switched into Train 739, which operates over our Chicago to Omaha main line to West Chicago, where it branches off on to the Freeport line, goes to Freeport or Rockford; and in the case of Beloit, it is switched into Train 591 at Proviso.

Q. At Proviso?

A. And goes out on the Wisconsin Division over to Desplaines, and from Desplaines west to Harvard, Harvard to Caledonia, and the Madison Division from Caledonia to Beloit.

Q. Would that last operation also include shipments to [fol. 1252] Lake Mills, Fort Atkinson and Madison?

A. Cars for Lake Mills and Fort Atkinson would go on to Janesville and be handled by a way freight crew on the Lake Shore Division to Lake Mills and—no, wait a minute, I am twisted. They go into Madison and over the Madison Division from Madison to Lake Mills and to Fort Atkinson out of Janesville over the Lake Shore Division. Now, Madison, of course, goes direct from Proviso on Train 591.

Q. Now, will you describe the handling of a car by the North Western received at Chicago, destined to Dixon or DeKalb?

A. A car received at Chicago or Proviso is taken on our, what we call a DeKalb extra, and is hauled, oh, let's say about 46 miles to DeKalb. A car for Dixon would go on one of our dead freights or time freights direct over the Galena Division to Dixon, but sometimes it is taken into Nelson and brought back by the switch run.

Q. You understand that in this proceeding we have referred to various representative suspended points and various representative comparative points. You have a list of those, have you not, Mr. Longman?

A. Yes.

Q. Now, will you describe the operating conditions, including the tonnage ratings or locomotives used in handling shipments by the North Western to certain of the rep-

resentative suspended points, taking a specific one, for [fol. 1253] example, from Peoria to Rockford, and compared with the operating conditions, including tonnage ratings, and so forth, in handling a shipment also from Peoria to Beloit, for example.

A. Well, on the Southern Illinois Division, we have two classes of power, classes J and J-4. The J engine has a tractive effort of 60,100 pounds and will haul 5,000 ton from Benld to South Pekin and 3600 ton from South Pekin to Nelson with a J-4 helper up the ruling grade, which we call Radner. That is about 10 miles long and the maximum grade in there is about 1.52 per cent.

A J-4 engine will handle—well, they have a tractive effort, with the booster, of 84,000 some pounds. They will handle 7300 between Benld and South Pekin.

Q. Are those actual ratings?

A. Yes, sir, actual ratings. They will haul 5,000 ton between South Pekin and Nelson, with a J-4 helper, up Radner Hill. We do at times fill out in storage, that is north of Radner, to as high as 7500 ton. That is after we cut off the helper.

Then on the Galena Division——

Q. The Galena Division is the main line?

A. The Galena Division is the main line and for the shipments you talk about, you use the main line from Nelson to West Chicago on a Rockford shipment and Nelson to Proviso on a Beloit shipment.

Now, from Nelson to DeKalb we can handle 4800 ton with a [fol. 1254] Class H locomotive—I made a mistake before. That J-4 that I spoke of hasn't 84,000 pound tractive effort; it has 79,200. The H engine has 84,200 pounds tractive effort, including the booster, and they will handle 4800 ton from Nelson to DeKalb and 5600 from DeKalb to West Chicago or Proviso.

A J-4 will handle 4500 ton from Nelson to DeKalb and 5200 ton from DeKalb to West Chicago or Proviso. A Class J locomotive will handle 3400 ton from DeKalb to Nelson and 4,000 ton from DeKalb to West Chicago or Proviso.

Cars for Rockford, as I said before, are set out at West Chicago and from that point are handled by what is known as a Class R-1 engine, which has a tractive effort of 30,900 pounds and they handle 2,000 ton from West Chicago to Freeport, Rockford being an intermediate station.

Now, the cars that are going to Proviso for Beloit are handled on the Wisconsin Division as I stated before. On that division we use Class J-A engines with 62,000 pound tractive effort and also Class J engines that have 60,100 pound tractive effort; and they handle 2900 ton to Beloit or Janesville.

Q. Now, Mr. Longman, if you handled the shipments from Chicago, that is received shipments at Chicago destined to Rockford on the one hand and Beloit on the other, would the handling as you have related it be the same? In other words from Proviso or West Chicago. You have described the movements in your previous answer from Peoria, as I [fol. 1255] understand it, to Rockford and Beloit. Now, I would like to have that same explanation made with respect to shipments that you received at Chicago. How would your answers differ?

A. Well, to Beloit, it would move directly out of Proviso to Beloit with a Class J-A or J engine to Beloit over the Wisconsin Division. As I stated before, the tonnage rating would be 2900 ton. So far as the movement from Proviso to Beloit, it's the same, identical. As to Rockford or Freeport, there would be a difference of 30 miles from Proviso to West Chicago and then it would move on the same train right into Rockford or Freeport, with a Class R-1 engine with a rating of 30,900 pounds tractive effort.

Q. Have you any further thing to add with respect to the movements of coal by the North Western that you think might be helpful to the Commission in this proceeding?

A. No, I don't think so.

Mr. Hunter: We tender Mr. Longman for cross-examination.

Mr. Zoll: I would like to ask just one question, Mr. Hunter.

By Mr. Zoll:

Q. Mr. Lynch, the superintendent of transportation of the Illinois Central, testified that we interchanged, the Illinois Central interchanged coal with the North Western at South Pekin. Is there any interchange at South Pekin?

A. Yes, sir.

Q. Is that correct?

[fol. 1256] A. Yes, sir.

Q. And how about Peoria?

A. Yes, sir.

Q. At both places?

A. Yes, sir. I failed to say that the I. C. also gave us coal at Peoria.

Mr. Zoll: Thanks. I just wanted to find out about that.

Mr. Cardy: Just one or two questions.

Cross-examination.

By Mr. Cardy:

Q. Mr. Longman, what is the mileage of the North Western in Illinois?

A. You have asked quite a question.

Q. Well, approximately. In other words, practically——

A. I wouldn't venture a guess.

Q. Outside of this——

A. Well, we have got 138 miles from Chicago to Clinton.

Mr. Hunter: What was the question?

Mr. Cardy: About what is the approximate miles of the North Western in the state of Illinois.

Mr. Hunter: Oh, I see.

By Mr. Cardy:

Q. In other words, Mr. Longman, maybe I can—practically all of your mileage except this line that runs down south to Benld is in Northern Illinois, is it not?

A. Yes, sir.

Q. Now, as a general proposition, is there any substan- [fol. 1257] tial difference in the movement of traffic on any portion of the line that might add to what you might say is confronted with adverse operating conditions? Is there any real difficulty on any portion of your line in the northern part of Illinois where you have adverse operating conditions?

A. No.

Q. In other words, if they are all substantially the same, that will answer my question.

A. Well, there is only one thing that has bothered me as an operating officer for a long time, is the low rating of the locomotive that we could use on the Freeport line.

Q. That is right. Take the line, we will say, from—where do you get your coal that originates in the Fulton-Peoria District, destined to Dixon?

A. Where do we get it?

Q. Your coal. That is, where is your transfer point on coal originating on the C. B. & Q. destined to Dixon? Is it at Buda?

A. We get it at Peoria.

Q. At Peoria?

A. That is right.

Q. You have given the transportation, the engine rating and the tonnage rating from Peoria to Dixon, have you not?

A. I gave it to Nelson and I also gave it from Proviso to Dixon, which is about the same, yes.

[fol. 1258] Q. Would you say the operating conditions on that portion of the track are substantially the same as the operating conditions on other portions of the track in Northern Illinois except possibly the Freeport branch?

A. I would say yes.

Q. Now, where do you get coal originating, we will say, at Wilmington, delivered by the C. & A. or the Santa Fe for points we will say Rockford, to Rockford?

A. I couldn't tell you.

Q. But wherever you do receive that coal, the transportation conditions from that junction point to Rockford would be substantially the same as in other directions?

A. I would say so.

Mr. Cardy: Thank you.

Exam. Trezise: Further questions?

Mr. Vesey: Yes, I have one or two.

Exam. Trezise: Mr. Vesey.

By Mr. Vesey:

Q. With respect to coal going to Beloit, as I understand your testimony, that coal is taken to Chicago, thence over your Wisconsin Division to Beloit?

A. To Proviso, which is about 13 miles west of Chicago.

Q. How do you spell that?

A. P-r-o-v-i-s-o.

Q. Now, that would be the junction point that you would take your Indiana coals that are transferred to you going [fol. 1259] into that section too, would it not?

A. That is right.

Q. Then so far as comparing Indiana and Illinois coals are concerned, they both move over exactly the same tracks going out of Proviso over your Wisconsin Division into

Beloit, Janesville, Madison, that section of the country?

A. That is right, from Proviso.

Q. Then with respect to coals going through Elgin, Belvidere, Rockford, Freeport, those coals would move over the same tracks regardless of whether they were Indiana or Illinois coals, right?

A. No, we don't get Indiana coal on our Southern Illinois Division. We get that at Proviso.

Q. You get it at Proviso?

A. That is right.

Q. Then that coal going——

A. The Illinois coal moves over the Southern Illinois Division and the Galena Division to Proviso, if it is going to Beloit; and the Indiana and the Kentucky coal that we receive at Proviso starts out of there on the Wisconsin Division.

Q. Now, does that coal, Indiana coal, let us say, going to Rockford, does that go out of Proviso to West Chicago, thence through Elgin, Belvidere to Rockford?

A. That is right, sir.

Q. Isn't that the same way that you can handle your [fol. 1260] Southern Illinois coal that comes up through Peoria?

A. Yes, that is true, but I thought you meant that we handled the Indiana and Kentucky coal also over the Southern Illinois and the Galena Division.

Q. No.

A. You are correct, yes, sir.

By Mr. Flansburg:

Q Well, Mr. Longman, do you take the Southern Illinois coal for Rockford and Freeport any further than West Chicago, or do you take it clear into Proviso?

A. We take it into West Chicago.

Q. That was his question. That is the only difference, as I understand it?

A. That is right.

Mr. Cardy: Just one other question.

Mr. Vesey: I am not through yet.

Mr. Cardy: Pardon me.

By Mr. Vesey:

Q. Just following along on that same thought, the coal that you would take originating in the Fulton County field, I take it that you would——

A. We don't originate any coal.

Q. No, I say coal originating in the Fulton County field and moving over the C. & N. W. tracks, where would you take that coal on, at Peoria?

A. I don't even know where Fulton County is.

Q. You mean the movement is so small that it is just [fol. 1261] insignificant to your railroad, is that it?

A. That coal we receive at Peoria.

Q. At Peoria?

A. That is right.

Q. Thence from Peoria on into all the territory where you would move coal either originating, destinations in the vicinity of Peoria or south of Peoria, it moves over the same tracks, as far as your road is concerned?

A. That is right.

Q. Now, do you have any arrangement for handling coal out of the Fulton-Peoria field originating on the M. & St. L. which then connects with the C. & N. W.?

A. Yes, sir.

Q. What is that arrangement?

A. We have trackage rights over the M. & St. L. and operate a crew out of South Pekin to Middle Grove. They pick up at Middle Grove, Farmington and Hanna. We get about 20 cars of commercial coal a day right now out of there.

Q. And that is what, a single line haul, then, as far as you are concerned?

A. That is right.

Q. Coming into Peoria?

A. That is right.

Q. Do those trackage rights that you have over the M. & St. L. carry as far as Monmouth or do they go just out past Farmington?

[fol. 1262] A. They go to Middle Grove, as I understand it.

Q. They go to Middle Grove?

A. Yes, sir.

Q. Handling Middle Grove Electric Company's coal at Middle Grove?

A. Yes, sir.

Mr. Vesey: I think that is all.

Mr. Cardy: Just one question.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Longman, on coal originating at Victoria, which is handled by the C. B. & Q. through Galesburg, would you not receive that coal at Sterling?

A. I don't know where we receive that coal, but I know we do receive coal from the C. B. & Q. at Sterling.

Q. At Sterling?

A. Yes.

Q. In other words, that is a regular interchange point of the C. B. & Q. and the North Western?

A. That is right.

Q. And between Sterling and Dixon, there aren't any difficult operating conditions?

A. Between Sterling and Dixon?

Q. Between Sterling and Dixon.

A. No, sir.

Q. And I understand you have no interchange at Buda [fol. 1263] with the C. B. & Q., is that correct?

A. We may get an occasional car but——

Q. Have you interchange arrangements? Is it possible to interchange there, if you know?

A. Well, I will have to say I don't know right now.

Mr. Cardy: All right, that is all.

Exam. Trezise: Any further questions?

Mr. Stadell: I have a couple.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. You referred, in answer to question by Mr. Vesey, I think, to your Southern Division. What do you mean by that?

A. That is the division between Benld and Nelson. It is 98 miles from Benld to South Pekin and 92 miles from South Pekin to Nelson.

Q. That is really in the northern portion of Illinois?

A. No, we call it the southern. Oh, well, maybe it is. Let's see. Well, I would say yes.

Q. Northern portion of Illinois?

A. That is right.

Q. Does the North Western have a direct connection at Peoria or Pekin with the T. P. W.?

A. Yes. No, no.

Q. Any coal that you would receive there from Fulton County mines would be through a switching line or belt line?

[fol. 1264] A. The P. & P. U. delivers it to us.

Q. Have you a direct connection at either of those points with the Burlington Railroad or do you receive your coal through the same switching line?

A. Well, they have a main line that is right adjacent to our Adams Street yard, but I couldn't tell you right now whether they deliver it themselves or through the P. & P. U.

Q. How about the M. & St. L., do you have a direct connection with them or do you receive through the P. & P. U. the coal through Peoria and Pekin?

A. I will have to say the same to that.

Q. You don't know?

A. That is right.

Q. Now, you referred to the fact that you had to use helper service out of Radner, Illinois?

A. Yes, sir.

Q. Could you tell me the approximate location of that hill?

A. Well, it is just outside of Peoria.

Q. Peoria; I see.

A. Out of our Adams Street yard; and I think it is about 10 or 11 miles in length.

Q. And in referring to a helper, you were referring to the use of an extra engine?

A. Yes, sir.

Q. Two engines?

[fol. 1265] A. Yes, sir.

Q. And for what distance would you have to use the helper?

A. Well, you would have to use them about—let me look at that—10 miles. In some cases we take them right out of South Pekin, but the grade is 10 miles long and we cut them off at Radner.

Mr. Vesey: That is all, thank you.

By Mr. Bather:

Q. In the handling of coal from Southern Illinois going through West Chicago to Belvidere, Rockford and Freeport and through Proviso to Beloit and Janesville, your line would be a circuitous line as compared with the Milwaukee road, would it not?

A. I don't know how the Milwaukee handles it.

Q. In the handling of coal from Indiana through Proviso to the destinations I mentioned, do you know whether or not your line would be substantially longer than the route via the Milwaukee?

A. I would say that judging from knowledge of my own line, why, we go quite direct.

Mr. Bather: That is all.

Exam. Trezise: If there are no more questions—

Mr. Vesey: I have one or two questions more.

Exam. Trezise: Mr. Vesey.

By Mr. Vesey:

Q. I forgot to ask you when I was cross-examining you, Mr. Longman, with respect to your coal coming up over your Southern Illinois Division, and particularly going [fol. 1266] from Peoria through to Nelson. Now, as I understand it, coal going to Dixon and Rochelle moves from Peoria to Nelson, thence to Dixon?

A. That is right.

Q. Thence to Rochelle. You gave us the mileage from South Pekin to Nelson. What is the mileage from Nelson to Dixon?

A. Well, just a minute. You see, I have got 8,000 miles of railroad. I can't keep all those things in my head. Nelson to Dixon is 6.4 miles.

Q. Now, coal originating either in Southern Illinois or Fulton-Peoria field that comes up through Peoria and Nelson—coming through Peoria, does that coal, if it goes to Clinton, does it go to Nelson, thence to Clinton?

A. Yes, sir.

Q. What is the distance from Nelson to Clinton?

A. Let's see, 34 miles.

Q. 34 miles?

A. Yes, sir.

Q. Now, just to understand your method of approximating here or phrasing, whichever way you want to term it,

operating conditions on a railroad from your own railroad, would you just tell me in layman's language, what is the difference, if any, in the operating conditions over your road between Nelson and Clinton on the one hand and Nelson and Dixon on the other hand with respect to coals going over the Peoria-Nelson Division?

[fol. 1267] A. None whatever.

Q. None whatever?

A. That is right.

Q. In other words, the only difference is the difference in miles, is that right?

A. That is right.

Q. Do you cross any bridges going from Nelson to Dixon, I mean any substantial rivers or the like?

A. Well, we have a river just west of Nelson.

Q. Just west of Nelson?

A. We cross two going into Clinton but, as I recall, we don't cross any going into Dixon.

By Mr. Hunter:

Q. Just to make the record clear, you are referring to Clinton, Iowa, there, are you not?

A. Yes, sir.

Mr. Hunter: All right.

By Mr. Vesey:

Q. One of those rivers is the Mississippi, I take it?

A. That is right.

Q. What is the other?

A. The other is the Rock.

Q. The Rock River. Does the C. & N. W. own the bridges over which its trains travel, let us say from Nelson to Clinton?

A. What is that?

Q. I say does the C. & N. W. own the bridges over which [fol. 1268] its trains travel on its line going from Nelson to Clinton, Iowa?

A. Yes, sir.

Q. Do you know what the costs of those bridges are?

A. No, I do not.

Q. As an operating man, do you get the figures compiled by your road with respect to the maintenance cost, either on a per mile basis or on a division basis?

A. Well, they are compiled, as I understand it, but I don't bother with them.

Q. You say they are what?

A. They are compiled, as I understand it, but I don't——

Q. In other words, they would be available?

A. I think so. I wouldn't make a statement and be sure about it.

Q. Would you have any objection to giving us the figures for the past ten years, maintenance costs on your railroad, just for comparison purposes, so that we may have a bridge on the one hand and a stretch without a bridge on the other, Nelson to Clinton versus Nelson to Dixon?

Mr. Hunter: We object to that; it is immaterial.

Exam. Trezise: What did you say?

Mr. Hunter: We object to that. It is outside the scope of this witness' testimony. He doesn't know anything as to maintenance costs, the figures. He so testified.

Mr. Vesey: Well, if the Examiner please, I think it might [fol. 1269] be very helpful to both commissions in this instance, where we have, fortunately, a strip of track where there are no bridges and the like involved, and we have a strip of track where we have two bridges. I think it would be most interesting and enlightening for us to see what was the maintenance cost over two comparable stretches, over the same railroad track, where coal comes up to a junction point, moves one direction without any bridges, moves the other direction with the bridges, just so we get that.

Exam. Trezise: Do you wish to furnish that, Mr. Hunter?

Mr. Hunter: No, sir, and I would like to state why. Mr. Longman is an operating man. We didn't bring in a maintenance man of the North Western. That is outside the scope of his testimony and we don't believe it is really material.

Exam. Trezise: Very well. Continue.

Mr. Vesey: In other words, I take it the answer was they declined to furnish that?

Mr. Hunter: Yes.

Exam. Trezise: Yes, I think that is right.

Mr. Hunter: That is correct.

By Mr. Vesey:

Q. Now, I believe in giving your history here, experience, Mr. Longman, you had rather a varied experience.

A. That is right.

Q. Are my notes correct in the fact that in addition to operating in the operating departments, so to speak, of the [fol. 1270] road, you were also in what you might term the maintenance division of the road as well?

A. No.

Q. You were not?

A. I was not. I was a locomotive engineer.

Q. Yes.

A. That is not in the maintenance division.

Q. Well, for example, would you give me the ruling grade on your Nelson to Clinton Division and the ruling grade on your Nelson to Dixon run?

A. You mean in per cent?

Q. Any way that you have it.

A. Well, I can say this to you, that the ruling grade is between Geneva and Elburn westbound and between Rochelle and Creston eastbound. I can get that percentage from my briefcase, if you wish it.

Q. Yes, if you will, please. Just to save repeating figures that I am not interested in anyhow, what I want is the ruling grade on your Nelson to Dixon traffic eastbound; on your Nelson to Clinton traffic westbound, in miles.

A. Nelson to Dixon eastbound?

Q. That is right. Nelson to Clinton westbound.

A. The ruling grade to Dixon is .782 per cent.

Q. That is .782 of one per cent?

A. That is right.

[fol. 1271] Q. Yes.

A. Now, you say to Clinton?

Q. That is right, Nelson to Clinton, westbound.

A. Well, 0.723.

Q. In other words, as far as ruling grades are concerned, Nelson to Dixon eastbound versus Nelson to Clinton, Iowa, westbound, would it be a true statement to say that there was no difference of note?

A. No, there isn't much difference.

Q. Would it be true to say that with respect to that same comparison again, Nelson to Dixon eastbound, Nelson to Clinton, Iowa, westbound, so far as operating conditions

are concerned, there is no substantial difference between the two movements?

A. No.

Q. The only difference of any consequence is the difference in miles?

A. That is right, sir.

Mr. Vesey: That is all.

Mr. Hunter: That is all, thank you.

Mr. Stadell: I just want to ask this:

By Mr. Stadell:

Q. Maybe I misunderstood you in connection with the figures you gave for this grade. That wasn't 7 per cent, was it?

A. Oh, no.

Q. It was .7?

[fols. 1272-1307] A. That is right.

Q. In both cases?

A. That is right.

By Mr. Vesey:

Q. In other words, as I understood you, it was .782 of one per cent in the case of Nelson to Dixon, .723 of one per cent Nelson westbound to Clinton?

Mr. Stadell: That is the correct figure.

Exam. Trezise: If there are no further questions, you may be excused, Mr. Longman.

(Witness excused.)

[fol. 1308] PETITIONERS' EXHIBIT No. 6

* * * * * * *

PROCEEDINGS

Exam. Trezise: All right, gentlemen, when you are ready we will begin. I believe it was the understanding that the Southern Railway witness was to be cross examined.

Mr. Dixon: Yes, that was the previous understanding. I would like to call Mr. Dilli back to the stand.

CARL W. DILLI resumed:

Direct examination (Continued).

By Mr. Dixon:

Q. Mr. Dilli, before cross examination begins, is there anything further you wish to say on direct?

A. I think perhaps if I restate our position——

Exam. Trezise: You should show that this is the same Mr. Dilli that appeared before, will you?

By Mr. Dixon:

Q. Are you the same Mr. Dilli that appeared at the previous hearing?

A. That is correct.

Exam. Trezise: On behalf of the Southern Railway?

Mr. Dixon: On behalf of the Southern Railway.

The Witness: That is correct.

By Mr. Dixon:

Q. Go ahead with whatever you wish to say.

A. I was about to say that three months have elapsed since I testified. It may progress matters a little if I restate our position in this case.

First, our main concern is in respect to differentials. [fol. 1309] However, we feel that the rates in the affected territory might well be increased. Second, our position is that there should be one rate for mines on all lines in the Brazil-Clinton group and from mines on all lines in the Linton-Sullivan group to individual destinations in the affected territory. Third, further, our position is that differentials between the Princeton and the Boonville groups, on the one hand, and the Linton-Sullivan Group, on the other, should be 7 and 10 cents per ton, respectively.

Exam. Trezise: And that means that you advocate the continuance of that 3 cents differential of the Boonville over the Princeton-Ayrshire Group?

The Witness: That is correct, yes.

Mr. Dixon: Is that all you have on direct?
The Witness: Yes.
Mr. Dixon: Cross examine.

Cross-examination.

By Mr. Cardy:

Q. Mr. Dilli, do you believe that the differentials that you suggested there would be reasonable based upon your knowledge of the transportation of coals in this territory?
A. Yes, that is our position.

Q. Now, Mr. Dilli, the Southern Railway extends from Louisville to East St. Louis, and you have some mines in the Princeton District. What are those mines, or where are they located?
[fol. 1310] A. They are included in the exhibit filed by Mr. Robertson.

Q. How many mines are there, one or two?
A. There are several, Ayrshire and Princeton—I think there are only two that are actively producing today.

Q. From that line that extends from Louisville to St. Louis, you have a branch line extending south from Huntington, do you not?
A. That is correct.

Q. That serves some mines?
A. Yes.

Q. And the mines on that branch are known as in the Boonville District, is that right?
A. Winslow District?

Q. Boonville District.
A. Boonville District, yes.

Q. How far are those mines apart, that is, the Princeton mines versus the Boonville mines, just the short line distance, or cross-country distance, you might say?
A. About 40 miles.

Mr. Biaett: What is that, the cross-country distance, or what?

The Witness: That is the rail distance, Boonville versus Princeton, on the average.

Mr. Biaett: What railroad?

The Witness: Southern Railway.

[fol. 1311] By Mr. Cardy:

Q. Now, what is your cross-country distance about?

A. I can't tell you. I haven't figured it.

Q. In other words, some of those mines in the Princeton District and Boonville District are pretty close together, are they not?

A. Well, the Boonville District is directly south of Princeton.

Q. Yes.

A. I was in that area at one time. It isn't a very great distance. It wouldn't be as much as the rail distance.

Q. You don't know that distance, and you don't know whether some of the mines in the Princeton District that are mining coal are located actually in the Boonville District, or vice versa?

A. No, I don't.

Q. Now, practically the only traffic on this branch is coal, as I get it from your statements, and coal traffic is very important traffic so far as the maintenance of that branch is concerned?

A. That is correct, yes, sir.

Q. I notice in your statement that you say the going into effect of the proposed rates or the changing of the differentials will result in the freezing of these mines, these groups, to the territory here involved. What do you mean by the term "freezing"?

A. Well, I stated that it was our opinion that it would [fol. 1312] result in freezing out these mine groups. I used the words "freezing out" in the sense it would stifle the movement, discontinue the movement from these mines if these differentials should be increased.

Q. In other words, if the differentials are increased, Princeton and Boonville over the other districts, it is your opinion that it will actually stifle or freeze the movement from the Princeton and Boonville mines, is that it?

A. Yes, that is our position.

Q. Now, I understand that prior to the present adjustment there was a substantially higher differential adjustment between the Princeton, Boonville and the Sullivan Districts. Was there any movement under a higher differential than the present differential?

Mr. Stadell: To where?

Mr. Cardy: To the affected territory involved.

Mr. Stadell: Give us the movement too while you are answering it.

Mr. Cardy: Just a moment, I am asking the question.

Mr. Stadell: Aren't you cross examining?

Mr. Cardy: Yes, but just wait untill I get through.

The Witness: Have you finished your question, Mr. Cardy?

Mr. Cardy: Yes, I have. In other words, on your page 5 of your statement, you say, prior to that time there was little, if any, movement from Boonville.

[fol. 1313] The Witness: I have in mind there prior to the time that we reduced the differential Boonville over Princeton, that is to say, made the differential 3 cents. Up until that time, I can't give you the tonnage figures, but we do know from experience there was very little movement from the Boonville District.

By Mr. Cardy:

Q. Based upon actual experience, there wasn't any movement from the Boonville District until you put in the present differential adjustment?

A. I couldn't go so far as to say there wasn't any movement, but I will go so far as to say the movement was of little consequence.

Q. Now, Mr. Dilli, do you know of any coal rate adjustment in Illinois where they make a distinction between local and joint line rates to this territory in Northern Illinois?

A. Well, you have it today from the Boonville, Princeton, Brazil-Clinton Groups. Other than that, I know of no other situation.

Q. In other words, the Brazil-Clinton, Princeton and Boonville have rates on the Milwaukee and the Illinois Central have rail rates which are lower than the joint line rates?

A. Yes.

Q. Do you know of any situation in Illinois, Western Kentucky or in Indiana where that condition obtains?

A. I haven't run into that situation in other places than that.

[fol. 1314] Q. Now, is there any substantial difference between the groupings in Illinois, and the establisment of

joint rates from various mines, to the territory involved, as compared to the adjustment of rates from the Indiana groups, particularly the Princeton and Boonville Groups?

A. Why, the Southern Illinois Group is substantially larger than either the Princeton or Boonville groups.

Q. And from the Southern Illinois Group are the rates the same to Northern Illinois from mines in that group, regardless of whether the movement is single or joint line?

A. That is my understanding of it, yes, sir.

Q. Is there any situation in Southern Illinois which might be comparable with the situation in Princeton and Boonville, where the Southern Illinois roads have extended the Southern Illinois rate to include mines similarly situated to Princeton, so far as the Boonville rates are concerned? Are you familiar with that?

A. I don't understand your question.

Q. You are not familiar with the rates on the Big Four in Saline County, where there is a separate line there and they have extended the Southern Illinois Group so that they have all one group, where in Indiana you have two groups where the mines are substantially the same distance apart. If you are not familiar with that, we will pass it.

A. I don't understand the question.

[fol. 1315] Q. I will withdraw it. Now, you feel that the rates you have there today are just and reasonable rates so far as the movement of traffic is concerned? In other words, the level of rates that you have from Princeton or the Boonville District to this territory, particularly at Beloit, are the highest rates under the present adjustment that you can move coal under?

Mr. Stadell: I object to that, Mr. Examiner. This witness doesn't represent the mines. He hasn't been qualified to express any opinions with respect to whether this coal would move on one rate or another rate.

Exam. Trezise: Well, ask him what he knows about that situation before you ask him the final question. Does he know?

By Mr. Cardy:

Q. Well, do you know, Mr. Dilli, whether or not if you increase the rate from Boonville it would or would not move any coal, particularly if the rates——

A. I don't know that that would be the fact. I can only express my opinion on that. I am satisfied that the differential as between the mines must remain the same if the mines are to compete with the other group of mines located north thereof. That is our position.

Q. In other words, you have no objection to increasing the general level of rates based upon present differentials?

A. No, so long as the differentials are maintained as of today, we would have no objection to increasing the freight rates.

Q. But if the present proposed adjustment goes into [fol. 1316] effect, it would be absolutely necessary for you to maintain your present rate from Boonville in order to compete?

A. Yes, I think that is correct.

Mr. Cardy: That is all.

Exam. Trezise: Well, as to that, you do not propose an increase in the rate to Beloit from the Princeton-Ayrshire Group?

Mr. Cardy: That is right.

Exam. Trezise: The present rate is $2.27 and you propose to continue that. The other carriers from that general group propose a rate of $2.39 in this I & S proceeding 5139 before us now. Do you mean to say that should the Commission find that the $2.39 rate is a reasonable rate that you would voluntarily come forward and increase your rate to the basis that the Commission would here determine to be a maximum reasonable rate or a reasonable rate?

The Witness: Well, if the Commission issued an order requiring us to establish the $2.39 rate, I assume we would have to publish it.

Exam. Trezise: That was not quite my question. You have no issue here before the Commission concerning the rate from the Princeton-Ayrshire Group to Beloit under the I & S proceeding?

The Witness: That is true.

Exam. Trezise: Because the present rate is $2.27, and you [fol. 1317] don't propose to change it. So there is no issue in that respect. Now, I don't want to get into a legal discussion, but how would you correct the situation—only by an order of the Commission?

The Witness: Yes, I think so.

Exam. Trezise: Well then, you wouldn't correct it, is that the point?

The Witness: Let it remain static as it is now. It doesn't need any correction.

Exam. Trezise: Then your statement that you would be willing to go along with the rates that may be found reasonable here and increase the rate to Beloit, for example, to the basis of the other carriers, would be meaningless, wouldn't it?

The Witness: Yes, that is correct.

Exam. Trezise: Then where do we stand? I am just in the dark here.

Mr. Cardy: There are some mines that are in the Princeton District that are not on his line, which are attempting to increase the rates.

The Witness: We are not attempting to increase the rates.

Mr. Cardy: No; and his statement is in justification of the present adjustment without increasing the rates. Now, there are some mines in the Princeton District that are attempting to increase the rate, and we object to that too. We object to where they are attempting to increase the [fol. 1318] rate and disturb the differentials.

The Witness: We have no objection to increasing the rates as a whole. I thought that is what Mr. Cardy was asking me, a general increase in the rates all over, we would have no objection to that, obviously.

Mr. Dixon: Mr. Examiner, I don't think we are under any delusions about it. If the Commission approves $2.39 from Princeton, we will have to publish it.

Exam. Trezise: You mean you think you will voluntarily publish it?

Mr. Dixon: I think the other lines will see to that.

Exam. Trezise: Well, can you speak for your railroad, then, as the attorney, and say you will publish it?

Mr. Dixon: If the destination lines say to publish it, we will have to publish it. Otherwise they could withdraw their concurrence.

Exam. Trezise: Well, of course, that is the fly in the ointment with respect to these rates. If we are going to have a uniformity of rates from these general mines in Indiana, it seems now would be almost the time to begin, since this issue has been bandied about here for a good

many years, and if we can arrive at some sort of conclusion in this procedure, then I think a great many of the difficulties of the future might be avoided. But if we can't arrive at a conclusion, we must continue, I suppose, as we have been in the past.

[fol. 1319] Mr. Vesey: I assume, if the Examiner please, that that was the feeling of the Commission when they denied the motion to consolidate, that is, we should continue in the future as we have in the past without conclusion.

Exam. Trezise: I have no comment on that, Mr. Vesey.

Mr. Cardy: Mr. Examiner, it is our position that the action of the Southern Illinois in maintaining the differentials by failing to increase the rates is proper. Now, there is some misunderstanding of my position. I think that is proper and just, that they maintain the differentials. Now, if the carriers north have maintained the differential, have increased the rates horizontally, I don't believe there would be any objection. But when you take a horizontal increase and disturb differentials, which other carriers have done, except the Southern, we object to it. Now, what I want to show by Mr. Dilli and bring out forcibly was that the adjustment from Boonville which they have figured out is the proper adjustment regardless of the level of the rates.

By Exam. Trezise:

Q. Well, Mr. Dilli, your line, of course, serves the Princeton and Boonville Group, is that right?

A. Yes.

Q. It does not serve the Brazil-Clinton or the Linton-Sullivan?

A. That is right.

Q. When you state that the present differentials from these various groups should be maintained and that you [fol. 1320] think they are proper—did you say you thought they were proper?

A. Yes, I feel they are. They are in the light of the decisions of the Commission in several cases before us. They involve the same thing, particularly I. & S. 4368.

Q. Then you have given consideration to the difference in distances and that was one of the factors; was it, that you took into consideration when you arrived at the conclusion that the present differentials should continue?

A. Yes.

Exam. Trezise: All right; do we have any other cross examination?

By Mr. Bather:

Q. Mr. Dilli, I believe you stated that the rates might be increased say to Rockford to the extent here at issue of 15 cents a ton and that your differential relationship from the Boonville district and the Princeton district over the Linton-Sullivan District should be maintained. Now, which of the rates would you apply the differential relationship to from the Linton-Sullivan District, a $1.90 rate via the Milwaukee road or the $2.02 rate via other lines?

A. We feel from the Linton-Sullivan, Brazil-Clinton Groups that the rates from all mines in those groups should be the same. Then, we would, of course, continue the present differentials.

Q. Well, on what basis, on the Milwaukee road rate or the rate applying via other lines from the Linton-Sullivan Group?

A. Well, we didn't increase our rate to Beloit by reason [fol. 1321] of the fact you had the $1.90 rate from Brazil-Clinton.

Q. Well, I am talking about Rockford now, not Beloit.

A. Well, yes, I think you ought to have a difference to both Rockford and Beloit.

Q. That is true. The Commission fixed that on the 13 cent basis, but in so far as the rate to Rockford, there are two rates from the Linton-Sullivan Group, one $1.90 rate via the Milwaukee road and a $2.02 rate via other lines. Now, which of those rates would you apply your 7 cent differential to from the Princeton Group and your 10 cent differential from the Boonville Group?

A. I think ultimately we would have to apply the lower rate.

Mr. Bather: That is all.

By Exam. Trezise:

Q. In saying that, do you place any reliance or do you base your answer upon a finding of the Commission in that former I & S case in which they approved going to Rockford, for example, $1.95, which if increased would be about $2.05 now?

A. I would prefer to use a rate prescribed by the Commission.

Q. And the rate here of $2.05 which is proposed to Rockford is the rate that the Commission approved, plus the increases, is it not?

A. Do I understand your statement that the Commission has prescribed $2.05 to Rockford from all mines in the Linton-Sullivan Group?

Q. No. I think that is true, that at least the exhibit [fol. 1322] shows that to Rockford from the Linton-Sullivan Group a rate of $1.95 was approved in I. & S. 4368, to which if you add 10 cents you would have $2.05 for the present rate.

A. Well, if the rate fixed in I. & S. 4368 is to apply from all mines in the group, and that was $2.05, as I understand it, then, of course, we will use the $2.05 rate and make the rates from Princeton 7 cents and from Boonville 3 cents over Linton-Sullivan.

Q. But your line doesn't serve the Linton-Sullivan Group. You are objecting in general?

A. Yes.

Exam. Trezise: All right, proceed, Mr. Bather.

Mr. Bather: That is all I had.

Mr. Wilkinson: May I ask a few questions?

Exam. Trezise: Yes.

By Mr. Wilkinson:

Q. You stated in reply to a question from Mr. Cardy that you served I think two mines, namely Ayrshire and another one in the Princeton Group. Do you publish rates in conjunction with the AW&W Railroad from the mines on that short line?

A. At page 3 of Exhibit 3 of witness Robertson there is found a list of the mines in the Princeton and Boonville District, and in that is shown a list of AW&W mines, which rates are published in connection with the Southern Railway.

Q. There are some four mines in that?

[fol. 1323] A. There are six mines shown in the Princeton Group on the AW&W.

Exam. Trezise: And that would make about eight mines then that you either serve direct or in connection with the AW&W?

The Witness: Well, the tariff mines on the Southern Railway in the Princeton-Ayrshire Group are six mines. I believe there is only Ayrshire No. 8 and Winslow that are the active mines in Princeton on the Southern Railway.

By Mr. Wilkinson:

Q. These mines in the Princeton Ayrshire Group and the Boonville Group are a source of fuel for the operation of your line from Louisville to St. Louis, are they not?

A. I would presume that our purchases for fuel coal are from those mines.

Q. Now, in respect to this difference in distance between Boonville, on the one hand, and the Princeton Ayrshire Group on the other, is it not a fact that for operating convenience the coal from the Boonville Group is backhauled to Huntingburg and then moves west through Princeton and on west to your connection with the north-south carriers?

Mr. Biaett: Mr. Examiner, I don't think this witness has been qualified to answer a question of the character submitted by Mr. Wilkinson.

Mr. Wilkinson: He can say so if he doesn't know.

The Witness: I do know the coal from the Boonville [fol. 1324] Group moves through Huntingburg and there is to be reclassified and moves east or west.

By Mr. Wilkinson:

Q. Purely as a matter of distance, it would be shorter if the movement of the coal went from the mines in the Boonville Group direct through Evansville, wouldn't it?

A. Yes.

Q. Will you refer to page 4 of your exhibit, Mr. Dilli. You show, for example, to Rockford, item 7 on that page, a rate of the Milwaukee, a present rate of $1.90 from Linton-Sullivan to Rockford?

A. Yes.

Q. You show a rate from the IC Railroad of $2.02?

A. Yes.

Q. Whereas on one of the other pages of your exhibit you show a rate from the Linton-Sullivan District—page 6, I think it is—of $1.90 to Rockford.

A. From Illinois Central?

Q. Yes.

A. That is right.

Q. Does that mean that those are rates local to the Milwaukee and to the Illinois Central, that is, that this $1.90 rate which you show on page 4 applies only via the Milwaukee?

A. Yes.

Q. And that the $2.02 rate applies from mines on the Illinois Central if it is participated in by the Milwaukee?

[fol. 1325] A. That is correct. In other words, as to the Milwaukee rate of $1.90, that will move directly over the Milwaukee. The $2.02 rate published from Milwaukee shown on page 6 would apply in connection with the movement of the Illinois Central Railroad.

Mr. Bather: Now, what do you mean by that?

The Witness: I mean that the $1.90 rate shown on page 4 as published by the Milwaukee will move directly over the Milwaukee Road. Then on page 6 we have the rate to Rockford published by the Milwaukee moving in connection with Illinois Central Railroad, $2.02.

Mr. Bather: Well, have the Milwaukee any rates from Linton-Sullivan to Rockford in connection with the Illinois Central Railroad?

The Witness: $2.02.

Exam. Trezise: Now, if your exhibit is wrong, why, you are going to correct it later.

Mr. Wilkinson: If our exhibit is wrong, we will correct it.

By Mr. Wilkinson:

Q. I want to find out this, Mr. Dilli, do you know whether or not there is a reciprocal switching arrangement between the carriers at Rockford?

A. I do not know that to be a fact, but I assume it would be because of the traffic.

Q. Under such a reciprocal switching arrangement would [fol. 1326] this $1.90 rate published by the Milwaukee apply to any delivery in Rockford that was merely switched at Rockford by the switching lines there?

Mr. Stadell: Now, I object to that, Mr. Examiner. The witness said he didn't know whether there was a reciprocal switching arrangement between the lines at Rockford. He said he assumed there was. Now, if he doesn't know, then I object to his answering the question.

The Witness: I don't know that to be a fact.

Mr. Stadell: Then I object to the question.

Exam. Trezise: The Examiner is interested in having that $1.90 rate made clear here. Mr. Dilli said it applied only by the Milwaukee and I understood you had an exhibit showing it by the Milwaukee and the Illinois Central.

By Mr. Wilkinson:

Q. Does the Illinois Central, as shown on page 6 of your exhibit, also publish a rate of $1.90 applicable via the Illinois Central to Rockford?

A. That is correct, yes.

Q. Whereas the C&EI publishes only a rate of $2.02—it has no $1.90 rate?

A. That is correct.

Q. Both the Milwaukee and the Illinois Central reach Rockford via their own rails from the Linton-Sullivan Field?

A. Yes.

Exam. Trezise: On a $1.90 rate?

[fol. 1327] The Witness: Yes.

By Mr. Wilkinson:

Q. At page 21 of your exhibit, Mr. Dilli, in the last two panels on that page you show difference, in the last right-hand column, difference, Princeton-Ayrshire and Linton, as 7 and 11.

A. Yes.

Q. Should that 11 not be 19?

A. It would be 19 if you use the $1.90 rate from Linton-Sullivan as compared with the $2.10. But those figures in the last two columns are only to represent the differences opposite the railroads shown under the column headed "published by." Now, to get the actual difference as between the lowest rate and the highest rate, you would have to use, let us say, the $1.90 rate that was published by the Illinois Central and the $2.10, which would be 19 cents.

Q. Well, the $2.10 is from Southern Illinois, is it not?

A. Yes, and the $1.90 from Linton-Sullivan, the lowest rate. The difference between those two would be 19 cents. But the figures I have shown is the difference between the two groups of mines as published by the individual carriers.

Q. Well then, go to your top panel, where you show a

$2.00 rate from Southern Illinois, $1.92 from Linton-Sullivan, $1.99 rate from Princeton-Ayrshire, and you show 7 and 19. Isn't that 19 there the difference between the lowest rate of $1.80 from the Linton-Sullivan and the $1.99 from Princeton-Ayrshire?

[fol. 1328] A. Yes, that is correct. Of course, you have the same situation at the bottom.

Q. So your 11 at the bottom should be 19 too?

A. Yes, it could be.

Q. In answer to questions addressed to you by Mr. Cardy you talked of the differentials as between Princeton-Ayrshire and Boonville, on the one hand, and Brazil-Clinton and Linton-Sullivan, on the other. Now, in your mind is there any importance in the differential as between Princeton-Ayrshire and Boonville, on the one hand, and Southern Illinois and the other Illinois groups, on the other?

A. I am not certain that I understand your question, Mr. Wilkinson.

Q. Well, will you refer to page 12 of your exhibit.

A. Yes.

Q. Now, in these territories in Southern Wisconsin the differential of Princeton over Linton-Sullivan is 7 cents?

A. Yes.

Q. Now, isn't it true to those same territories Princeton is 13 cents under Southern Illinois?

A. Generally speaking, yes.

Q. Now, do you figure that the differential between the Illinois mines and Indiana mines, is as important to Princeton as the adjustment between the Indiana mines themselves?

A. Well, they are all definitely related. You could hardly [fol. 1329] get away from a different differential than 13 cents Princeton under Southern Illinois.

Q. You stated that if the differential were increased as between Princeton, on the one hand, and Linton, on the other, that it would operate to reduce the movement of coal from the Princeton-Ayrshire District into this territory?

A. Yes.

Q. Now, assume that the differential as between Princeton and Linton were maintained at 7 cents, but the differential as between both Linton and Princeton were wide materially, or narrowed materially, in relation to Southern Illinois, would that in your opinion affect the movement of traffic from both Linton and Princeton?

Mr. Stadell: I object, Mr. Examiner. This witness has not been qualified to testify on that subject. He hasn't been qualified as an expert on coal sales or the movement of coal from these mines.

Exam. Trezise: Well, let us just ask him, ordinarily, if you changed differentials, you may change the flow of traffic?

The Witness: Well, that is what is always represented to us by our shipping interests.

Exam. Trezise: That is the recognized fact. Ordinarily that is true. Now, whether it is true in this case, that is another question.

By Mr. Wilkinson:

Q. Do I understand, Mr. Dilli, while you haven't made [fol. 1330] any changes in your rates to Rockford and this differential would continue in the present state at Rockford, it is your opinion that in all this Northern Illinois territory you have shown here you should have the uniform adjustment in differentials?

A. Yes.

Mr. Wilkinson: That is all.

Exam. Trezise: Well, what you call uniform is the continuance of the present differential?

The Witness: Yes, that is what I had in mind.

Mr. Wilkinson: Well, what we call standard differentials, the same ones that apply at Southern Wisconsin, the 7 cents and 13 cents there shown, if that is what you mean by "present."

Exam. Trezise: Well, the present ones, are you going to call them standard ones? I don't know just what you mean.

Mr. Wilkinson: I say, when you say present differentials, you don't have much of a differential adjustment at Rockford. Now, I understand a differential adjustment is something that is constant over a certain territory, not where you have one differential at one place and another one at another point two miles beyond and still a third one four miles further.

Exam. Trezise: Then what you are driving at is that the differentials should be changed to some place to make them uniform to meet your so-called standard, which is, as I understand it, a differential that generally applies to the [fol. 1331] majority of the points.

Mr. Wilkinson: Yes.

Exam. Trezise: And that those differentials should be changed to that basis.

Mr. Wilkinson: That is right. I take the position that the standard differentials, that that applies generally throughout this territory, Wisconsin, Iowa, Minnesota, most of the points in Illinois.

Exam. Trezise: Let us ask the witness how he feels about it.

The Witness: I feel that the present differentials to the affected territory should be Brazil-Clinton over Linton-Sullivan 7 cents, and Boonville over Princeton 3 cents, which would coincide with the majority of the territory surrounding the affected territory, as outlined in pages 13, 14 and 15 of my exhibit.

Exam. Trezise: You do not subscribe to the inclusion of the Boonville Group in the same rate group as the Princeton-Ayrshire, regardless of the fact that you mentioned there may be somewhat of an artificial haul of some kind?

The Witness: We are not advocating any change in the existing spread as between Boonville, on the one hand, and Princeton, on the other hand, in this proceeding.

Exam. Trezise: Did you mean to infer by saying that coal from Boonville was possibly hauled farther than it [fol. 1332] should be that that could be avoided, or do you know about that?

The Witness: I don't think that we would transport coal through Evansville which might make a shorter distance than through Huntingburg. Does that answer the question?

Exam. Trezise: Well, you have answered that question. My question was in general, whether or not there is an artificial haul on the coal from Boonville, thus increasing the rate to a greater extent than would be absolutely necessary if efficiency was put in practice.

Mr. Dixon: Mr. Examiner, what do you mean by artificial?

Exam. Trezise: Do you know what I mean when I say "artificial," Mr. Dill?

The Witness: I think you mean when we have a route that may be somewhat greater through Huntingburg than if it were handled through Evansville, and that is what you probably mean.

Exam. Trezise: Unnecessary, we will say, instead of artificial, an unnecessary haul.

The Witness: No, I couldn't agree with you on that because the probability is that while we do handle it a greater distance through Huntingburg than via Evansville, we do it because the operating conditions are more suited to hauling it via Huntingburg than via Evansville.

Exam. Trezise: You say because you do it there must be some reason for it.

The Witness: Undoubtedly.

[fol. 1333] Mr. Dixon: Gives you a better haul is one reason.

The Witness: Well, you get better divisions on it.

Exam. Trezise: All right, continue.

Mr. Wilkinson: I finished my questions.

Mr. Biaett: I have a few questions, if I may.

Exam. Trezise: All right, Mr. Biaett.

By Mr. Biaett:

Q. Mr. Dilli, will you refer to page 12 of your exhibit 17, please.

A. Yes.

Q. The points shown as red on page 12 of that exhibit are points to which the Southern *Railroad* has published the rates under suspension in Northern Illinois, are they not?

A. Yes.

Q. Were those rates published voluntarily by the Southern?

A. Yes.

Q. Now, to those points as I read the exhibit the differentials Princeton over Linton-Sullivan are 7 cents over the higher rate from Linton-Sullivan and 19 cents over the lower rate from Linton-Sullivan, are they not?

A. That is correct.

Q. Now, to Beloit you show that the suspended differential is a straight 7 cents?

A. Yes.

Q. Now, in publishing your rates to Beloit you voluntarily refused to increase the rates so that the differentials would [fol. 1334] be on the same basis as they are at Rockford and these other points in Northern Illinois?

A. We didn't publish any suspended rate to Beloit.

Q. Well, in publishing rates to Beloit, although you made no change, you did not publish them on the same basis as

the other carriers from Princeton and Boonville, is that correct?

A. That is correct.

Exam. Trezise: You did do that at the time you published them, didn't you?

The Witness: Oh, initially, but you mean following the rates under suspension?

Mr. Biaett: No; when these tariffs were filed.

The Witness: The tariffs under suspension?

Mr. Biaett: Yes, when the tariffs under suspension were filed.

Exam. Trezise: You didn't change any rate.

The Witness: To Beloit.

Mr. Biaett: To Beloit, that is correct.

The Witness: That is correct.

By Mr. Biaett:

Q. Now, the other carriers in publishing rates to Beloit put in this 7 and 19 cent differential basis Princeton over Linton-Sullivan, did they not?

A. Yes.

Q. Now, if you don't see any objection to publishing voluntarily rates to Rockford, Northern Illinois; on that 7 and 19 [fol. 1335] cents, what objection do you see to that differential to Beloit?

A. In the majority of cases we are 7 cents over Brazil-Clinton.

Q. But you see no objection to it to Rockford and the other points?

A. Yes. I can't see that it is entirely correct.

Q. Well, whether you see any objection to it or not, you voluntarily published them?

A. Yes, we did.

Exam. Trezise: Well, your page 12 is not designed to show where you published proposed rates, but that some of the carriers in the proceeding did publish proposed rates?

The Witness: We published the rates under suspension, we published to Rockford and the points shown in red. We didn't do it to Beloit, however.

By Mr. Biaett:

Q. Now, with respect to your position, Mr. Dilli, my impression is that the Southern Railway is interested in a uniform rate or uniform differential to be applied from Brazil-Clinton and from Linton-Sullivan. That is correct, is it not?

A. Will you state that over again?

Q. The Southern Railway is interested in the application of a uniform rate from Brazil-Clinton, that is, the same rate via all lines, and a uniform rate from Linton-Sullivan, that is the same rate via all lines, is it not?

[fol. 1336] A. Yes, that is correct.

Q. Now, you also stated, did you not, that the Southern Railway had no objection to the level of these rates, but you were interested primarily in the differential relationship between Princeton and Boonville, on the one hand, and Linton-Sullivan, on the other?

A. I qualified that statement by saying we thought that the rates from all mines in the group should be the same.

Q. Well, in that case, I take it, that it doesn't make any difference to you whether a uniform rate from Brazil-Clinton, say, would be established on the Milwaukee basis or it would be established on the basis of the lines publishing higher rates than the Milwaukee?

A. My answer would have to be obviously, yes, because that is our position here, that there should be one rate. Whatever that rate may be, then we think it ought to be one rate from the entire group.

Exam. Trezise: Didn't you tentatively at least subscribe to the basis the Commission found in I. & S. 4368 plus the increase?

The Witness: Yes. I qualified my statement further by saying I would prefer to have the rate as established by the Commission or what you will find.

By Mr. Biaett:

Q. Now, Mr. Dilli, you are familiar with the exhibits introduced in these proceedings, are you not?

[fol. 1337] Not too much in detail. I was here when they were all filed.

Q. Do you know whether or not the exhibits which have been introduced in this proceeding show that to the 12 rep-

resentafive suspended points which the carriers have selected the distance from Princeton and from Southern Illinois is approximately the same? I think Exhibit No. 11 will show the data that I am referring to, Mr. Dilli.

A. Well, if it is in the exhibit, why, I presume that the exhibit is correct. If that is a fact, I can't refute it.

Q. Those exhibits also show, do they not, that the distance from Boonville to the representative suspended points is approximately 30 miles greater than the distance from Southern Illinois?

A. Are you speaking of Exhibit 11?

Q. Yes. That is the composite of the other exhibits. I believe that exhibit shows approximately 361 from Southern Illinois, 358 from Princeton, and 391 from Boonville, does it not?

A. 361, yes.

Exam. Trezise: And Boonville is 391, is that right?
The Witness: Boonville, 391, yes.
Exam. Trezise: 30 miles.
The Witness: 30 miles.

By Mr. Biaett:

Q. Now, in view of the fact that the average distance from Princeton is 358 miles and the average distance from [fol. 1338] Southern Illinois is 361 miles, do you know of any reason why a different rate should apply to these points from Princeton than applies from Southern Illinois?

A. If you are going to consider it from the standpoint of distance and distance alone, there probably is no reason why. But there are other elements that enter into it, such as the grouping of long standing that the Commission has referred to in any number of cases.

Exam. Trezise: Now, Mr. Dilli, when you testified about this relationship and grouping relationship, I understood you were talking about the grouping relationships in Indiana, one group compared with the other. At least you directed your testimony to that. Now, are you going outside of that and coming over into Illinois or over into Western Kentucky or some of these other places and making the same sort of statement?

The Witness: No, I hadn't intended to do that, but he asked the question and I attempted to answer it. I have

stated continuously that our interest was primarily in the relationship as between Princeton-Boonville and Linton-Sullivan.

Exam. Trezise: And your former testimony had reference to the relationship of the Indiana groups particularly, and now you have gone outside of that and are talking about the relationships to Illinois, is that right?

The Witness: He has gone outside.

[fol. 1339] Exam. Trezise: Yes, he has gone outside. All right, go ahead.

By Mr. Biaett:

Q. Now, irrespective of this relationship between the Indiana groups, on the one hand, and the Illinois groups, on the other hand, do you know of any reason why a different rate should apply from Princeton than applies from Southern Illinois?

A. If distance is the controlling factor, then I am frank to admit that the rates would probably be the same providing the distance is the same. But in instances that I have cited in my exhibit the Commission has said the distance is not controlling and that groupings once established should not be lightly considered or disturbed; and these groupings certainly have been in effect for a number of years.

Q. And you are speaking there of the groupings between the Indiana mines solely?

A. Primarily, yes.

Q. Without regard to their relationship to the rates from the Illinois mines?

A. Yes. It works out, however, that the basis for your rates reverts way back to a difference between Southern Illinois, on the one hand, and Princeton, on the other, the way the rates are related to each other.

Q. And by that comparison it is your position that you can secure a lower rate from Princeton than you can from Southern Illinois irrespective of the fact that the distance [fol. 1340] is substantially the same?

A. That is right. The basis for the rates reverts right back to Princeton being under Southern Illinois.

Mr. McElroy: You can't lose on that deal, can you?

The Witness: No.

By Mr. Biaett:

Q. Now, if we are not going to consider distance in establishing these rates and the relationship of these rates, what other factors are we going to take into consideration?

A. I suppose initially distance was considered, competitive conditions, undoubtedly competition between the several groups of mines.

Q. Now, you take the position that distance isn't controlling in this Indiana adjustment which when applied in that manner gives you a lower rate than Southern Illinois. Now, what factors are taken into consideration if distance is not?

A. Competition, I suppose.

Q. What kind of competition?

A. Market competition.

Q. Market competition?

A. The ability of the mines to compete with each other.

Q. Now, the Southern Railway serves the Princeton and Boonville groups, does it not?

A. Yes.

Q. But it does not serve this destination territory?

[fol. 1341] A. No.

Q. Does it connect with any line which serves this destination territory through which the rates apply?

A. Yes, Illinois Central. We have a route in connection with the Illinois Central. I believe the majority of rates, though, there is an intermediate carrier, overhead carrier. I don't have all the routings here.

Q. There are at least two carriers and often three carriers involved, are there not, in the rates from Princeton or Boonville to the suspended points in Northern Illinois?

A. Yes.

Q. Now, can you estimate what percentage of the haul the Southern participates in?

A. I wouldn't attempt to give you a figure. It is a small part of the total haul.

Q. A small part of the total haul?

A. Yes.

Q. Then it is your position, is it not, that the other carriers who are involved in this proceeding should join in rates with the Southern from Princeton and Boonville to representative suspended points in Northern Illinois, which are not justified by the difference in distance between

Princeton and Boonville and Southern Illinois, in order to enable the Southern to meet others in market competition?

A. Yes.

[fol. 4342] Mr. Biaett: That is all I have.

By Mr. Vesey:

Q. Would you carry that same principle on throughout the relationship between the other groupings in Northern Illinois?

A. Do we carry it?

Q. I say, would you carry that thesis, that theory?

A. We have all along.

Q. In other words, that would meet your approval in the establishing of a so-called just and reasonable rate structure?

A. I am not certain I follow you.

Q. Well, let's put it in another way. As I understand your answers to Mr. Cardy, it was a fundamental pillar in establishing a just and reasonable rate structure that you maintain the differential relationships between groups which as you said later on were of long standing, is that right?

A. That is right.

Q. Now, I take it, that there is some basis upon which you arrive at those differential relationships, is that right?

A. Yes.

Q. What is that basis?

A. Certainly not distance.

Exam. Trezise: But distance has something to do with it?

The Witness: Some element, it is one of the elements, obviously, but the principal element is the competition, the ability of the mine to produce in competition with the [fol. 4343] nearer producing point to the ultimate destination or consuming point.

Exam. Trezise: Do you say that is the principal element?

The Witness: The ability to compete, one mine to compete with another.

Exam. Trezise: You don't mean that would take precedence over distance, do you?. Wouldn't distance be more important?

The Witness: No, I think not. I think the element of competition is more important than distance.

Exam. Trezise: You wouldn't carry that to an extreme though, would you?

The Witness: The question of competition? You couldn't carry it to such an extreme that the ultimate rate would not be compensatory, obviously.

Exam. Trezise: Well you mean that the rate for 10 miles, if it were the same as for 500 miles, you wouldn't say that that was right?

The Witness: No, not at all. I am speaking of the element of distance and when talking about the element of distance, it is the shorter distances not the extreme.

Mr. Biaett: Are you through, Mr. Vesey?

Mr. Vesey: I will defer to you.

Mr. Biaett: No, go ahead.

Mr. Vesey: Well, I am through.

By Mr. Biaett:

Q. In speaking of this differential which you think should be 7 cents Princeton over Linton, do you know the Princeton [fol. 1344] distance, between Linton-Sullivan and Princeton-Ayrshire, to the representative suspended points in Northern Illinois?

A. You want Princeton versus Linton-Sullivan, is that it?

Q. Yes.

A. Well, it is about 64 miles to the suspended territory.

Q. Isn't it more than that, and that differential is 7 cents, is it not?

A. Yes.

Q. Now, Mr. Dilli, do you know of any other differential between two groups in this particular adjustment in Illinois and Indiana and Western Kentucky as low as that differential of 7 cents for 63 miles?

A. In this particular adjustment?

Q. In this particular adjustment. That is the only one we are interested in here.

A. Well, that is the only difference we have got as between these mines, and the 7 cents, that is the only difference that you do have.

Q. Well, do you know of any other place in this adjustment where the difference between two groups is 63 miles and there is as low a differential between them as 7 cents?

Mr. Vesey: I object to that question unless we find out first whether there is a comparable relationship.

Mr. Biaett: I am asking him if he knows.

[fol. 1345] The Witness: No.

Exam. Trezise: The answer is, no.

By Mr. Biaett:

Q. With respect to Boonville over Princeton the differential there is 3 cents, is it not?

A. Yes.

Q. And you have stated that the difference in distance was approximately 40 miles?

A. Yes.

Q. Now, do you know of any differentials between any two other groups in this adjustment where the differential is on as low a level as 3 cents for 40 miles?

A. No.

Mr. Biaett: That is all.

By Mr. Cardy:

Q. Do you know of any mines in Illinois where they are located probably 100 miles apart, where they take the same rate, like for illustration, the Springfield District?

A. And Southern Illinois.

Q. Now, one other question, do you know whether or not there are any routes over which coal moves from Southern Illinois to this northern territory that might be graded on the mileage from Boonville to the same destination?

A. I believe there are some, yes.

Q. You don't know what the average figure overall would be if you compared the movement from Southern Illinois via some of these long routes as compared to the actual mileage from Boonville, do you?

[fol. 1346] A. No.

Q. The Southern Railway is the only line that serves the Boonville district and necessarily you have to take that mileage to destination. That is true, is it not? The Southern Illinois District has a great many mines and a great many routes——

Mr. Stadell: Are you testifying now or asking a question?

Mr. Cardy: I am asking him now whether or not the fact that there are a great many routes from Southern Illinois and only one route from the Boonville District might have

some effect on the comparative mileage that we have in this proceeding, so far as the actual movement of coal is concerned.

Mr. Stadell: I object. There has been no showing there is only one route from Boonville or that there are many from Southern Illinois.

Exam. Trezise: He may answer if he knows.

The Witness: Well, the distances and routes are all shown in Section 4 of Robertson's Exhibit, from all the different mine groups.

Mr. Stadell: Well, it is already in the record, then, and it is repetition and I object to it.

Mr. Cardy: All right, that is all.

Exam. Trezise: Any further questions of Mr. Dilli?

Mr. Stadell: I have some questions.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. In your prepared statement, Mr. Dilli, that was read [fol. 1347] into the record, you stated that the Southern Railway did serve mines at one time in the Belleville, Illinois Group. Could you tell us how many mines it served in that group? I am not talking about the tariff origin points that are shown in Robertson's Exhibit No. 4 that you are looking at. I am talking about the mines.

The Witness: I don't have that handy.

Q. Does the Southern Railway serve any mine in the Belleville, Illinois Group at the present time?

A. I understand there is only one mine operating in the Belleville group, Mauren, I believe. Did you say Southern Illinois?

Q. No, I asked you if the Southern Railway serves any mine at the present time in the Belleville, Illinois group?

A. Mauren is in the Belleville Group, is it not?

Q. I couldn't tell you.

A. Apparently not. Here they are listed, in Belleville, Little Oak Mine, Mauren Mine, Oak Hill Mine, Shiloh.

Exam. Trezise: And you are reading from page 2 of Exhibit 3?

The Witness: Yes.

By Mr. Stadell:

Q. Do you know whether those are mines or tariff origin points?

A. Tariff origin points.

Q. Do you know whether there are any mines in operation on your railroad at those tariff origin points at the [fol. 1348] present time in the Belleville District?

A. I don't think there are.

Q. Does the Southern Railway serve mines in any other district in Illinois?

A. No.

Q. Does it participate in hauling coal or in the rates from any mine in Illinois to any point in the affected territory?

A. No.

Q. What are the mines that are served by the Southern Railway in the Boonville, Indiana Group?

A. Boonville?

Q. Yes. I want the names of the mines, not the tariff origin points.

A. You want the operator?

Q. Yes, I would like to have the operator, the name of the coal operating company, the name of the mine or the number of the mine, if you can give it to me.

A. Algers, Winslow & Western Railway located at Oakland City.

Q. That isn't your railroad, is it?

A. Well, we connect with the AW&W. If you don't want that——

Q. Well, give that.

A. Ayrshire Patoka Colliers Corporation at Ayrshire; ES&N Railroad at Chandler.

Q. Is that the name of a mine or the name of a railroad?

A. It shows in our Car Distribution as the name of the operator.

[fol. 1349] Q. What was that again?

A. ES&N Railroad at Chandler; Sunlight Coal Company No. 11, Boonville; New Liberty Coal Company—wait, we can cut that out because it doesn't show any tonnage ratings; the Mariah Hill Super Block Coal Company at Dale, and that is all. That was taken from our Coal Car Distribution for July, 1943.

Q. Now, those are the mines, as I understood it, that are located on the AW&W?

A. No, they are located on the Southern and the AW&W.

Exam. Trezise: All of them?

The Witness: The only mines located on the AW&W would be—did you want the name of the operators—Algers, Winslow & Western Railroad. The rest would be located on the Southern Railroad.

By Mr. Stadell:

Q. You say the only mine located on the AW&W is the Algers, Winslow & Western Railway?

A. No. You asked me for actual producing points. I can't give you them as to individual points, because I don't have the movement, all the billings to take it from. We just have to call that points on the AW&W Railway. There are several of them as indicated in Robertson's exhibit.

Q. Several mines?

A. Yes. Probably, Mr. Stadell, there will be the operators, I presume, here to testify that and probably they can tell you better about that.

[fol. 1350] Q. I am interested in getting the information from you because you very freely expressed your opinions here as to whether the movement from these mines would be stifled, and I assumed that you at least knew the names of the mines or the coal operating company.

A. The AW&W are producing at Bryant and Canal, Indiana, Cato, Enosville, and Globe.

Q. That isn't the name of the mine. That is just the tariff origin point at which the mine is located?

A. That is right. I don't know the names of the mines.

Q. Now, these origin points, or whatever they are, that you have given me, are those the ones on the Southern Railway and the AW&W in the Princeton District?

A. The AW&W mines in the Princeton District, and I think—I gave you a series of figures, didn't I? That would be all, both in Princeton and Boonville.

Q. You mean you make no distinction if they are located in Princeton or Boonville?

A. I can make a distinction.

Q. Will you do that?

A. Princeton would be the AW&W—shall I give you the names of these points shown in the tariff again?

Q. No, that doesn't help any.

A. All right. As to Southern Railway, it is Ayrshire No. 8——

Q. That is in the Princeton District?

[fol. 1351] A. Yes, and Boonville is Boonville, Indiana, Chandler, Dale, Lincoln City, and Stevenson, Indiana Sunlight No. 11.

Q. That still isn't the name of the mine or the operating company in the Boonville or Princeton District, is it? It is just the origin point at which those mines are located.

A. We know the Sunlight is a mine.

Q. That is the only one that you know is a mine?

A. I know Ayrshire No. 8 in Princeton is a mine.

Q. Can you tell us what proportion of the coal shipped from mines in the Princeton District originates at the mines served by the Southern Railway in any one year?

A. No, I can't.

Q. Can you tell me what proportion of the total coal that is shipped from mines in the Boonville District originates at those mines served by the Southern Railway?

A. No.

Mr. Dixon: You know that, don't you?

The Witness: No. He is speaking of all your coal in Indiana as compared with Boonville.

Mr. Stadell: No, I am talking about Boonville.

The Witness: Will you restate the question.

Mr. Stadell: Will you read my question, please.

(Question read.)

The Witness: All of them, because the only mines in the Boonville District are located on the Southern Railway.

[fol. 1352] By Mr. Stadell:

Q. Now, in connection with coal originating at mines on the Southern Railway that is destined to points in the Northern Illinois territory involved in this proceeding, where would the Southern Railway turn that over to some other railroad, and give us the name of the railroad.

A. I don't have all the tariff routes here.

Q. Well, I understood Mr. Cardy told you there was only one.

A. One junction point.

Q. One tariff route.

Mr. Cardy: One originating line.

The Witness: No, we have a number of connections. Browns would be one. Mt. Carmel would be another.

By Mr. Stadell:

Q. In the case of Browns, tell me the name of the railroad to whom the Southern Railway would turn that traffic over?

A. Illinois Central.

Q. Illinois Central at Browns. What other railroad would you turn it over to and at what point?

A. No doubt we have routes in connection with the Big Four through Mt. Carmel, B&O through Fairfield, C&EI through Mt. Vernon.

Q. Big Four through Mt. Carmel, B&O through what?

A. Fairfield.

Q. Fairfield, Illinois?

A. Yes; C&EI, Mt. Vernon; Illinois Central and CB&Q, [fol. 1353] Centralia. I am satisfied that we have routes via all those junctions. I can't tell you all offhand.

Q. Do you mean to say, Mr. Dilli, that the Southern Railway would haul coal from mines on its line in the Boonville District going to Rockford or Freeport, for example, clear over to Centralia, Illinois, through the Southern Illinois Group, and there turned over to the Illinois Central or CB&Q?

A. I can't tell you exactly how it is handled, Mr. Stadell, but I am satisfied we have routes through those junctions.

Q. And despite the fact that you would haul it all that excess distance from the Boonville Group, through Southern Illinois Group, over to Centralia, where it would be turned over to a railroad going to Rockford, you still want a 10 cent lower rate than from the Southern Illinois Group?

A. Yes.

Q. Can you tell us or can the information be obtained from Mr. Robertson's exhibit showing the mileage from mines in the Boonville District over the Southern Railway to the point where you would turn the traffic over to the Illinois Central or the Big Four, B&O or CB&Q?

A. I think he has in his exhibit, Section 4, the shortest and longest distances, in fact, all the distances via the different routes.

Q. What I am particularly interested in getting, Mr. Dilli, is the mileage that the Southern Railway hauls the

[fol. 1354] coal that you originate in the Boonville Group to the junction where you turn it over to some of the lines, that is the traffic going up to the suspended territory.

A. You mean our distance to the junction point?

Q. Yes, that is right.

A. No, I don't believe it is in here.

Q. Can you give that to me?

A. Yes, I can get it out of our distance table.

Q. I don't want you to take the time now, but will you later?

A. Would you like for me to get the distance from the junction point to some specific destination point and via the routes——

Mr. Stadell: Take Rockford, Freeport and Beloit.

Mr. Dixon: Mr. Stadell, why don't you do that?

Mr. Stadell: Why don't I do that?

Mr. Dixon: Yes.

Mr. Stadell: He has got the information.

The Witness: Well, it is on file with the Interstate Commerce Commission, but I don't object to furnishing it. Are you the only party that wants it? We don't have a copy of the transcript and we don't have the names of the parties of record.

Mr. Stadell: If you furnish it to me, I will see it gets in the record.

The Witness: You want Freeport?

Mr. Stadell: Rockford, Freeport and Beloit. What I would like to have is the distance that the Southern Railway hauls——

[fol. 1355] The Witness: To our junction points?

Mr. Stadell: To your junction points, on coal that you originate in the Princeton and Boonville groups going to those three destinations.

The Witness: Yes.

Mr. Cardy: Mr. Stadell, would that distance be comparable to the distance you are using from Southern Illinois?

Mr. Stadell: I don't know. You can argue that.

Mr. Cardy: Will you have the same information from Southern Illinois?

Mr. Stadell: Yes, we will.

Mr. Dixon: Is that information to be via a tariff route only or via a route from which there is an actual movement of coal?

Mr. Stadell: That is tariff routes.

Mr. Dixon: You want the average distances now from the Boonville Group to those three destinations via all tariff routes, is that right?

The Witness: There would only be three or four.

Mr. Stadell: That is right.

Mr. Dixon: There are several tariff routes. What do you mean?

The Witness: I mean junction points.

Mr. Dixon: Then after you get beyond the junctions, like Centralia and those others, then you have plenty.

[fol. 1356] The Witness: Yes, that is true, but he doesn't want those distances. He wants our distances to the junction.

Mr. Dixon: Oh, just to the junctions?

The Witness: Yes.

Mr. Stadell: That is right.

Mr. Dixon: Oh.

Exam. Trezise: In order that the record may be clear, the witness stated that he understood that the distances were shown in these exhibits 3 or 4 over the shortest routes and the short routes, and all distances. The Examiner wants to state for the record he has been unable to find any distances of the average of the shortest tariff routes from any of the Indiana groups to any destinations. Go ahead.

By Mr. Stadell:

Q. Now, I am not sure that I understand exactly your position or the position of the Southern Railway in this proceeding. Was the testimony that you have given here presented on behalf of the Southern Railway only or was it presented on behalf of all of the railroads that are parties to the proceedings?

A. Southern Railway only.

Q. Are you appearing or was your testimony offered in support of the proposed increased rates that are under suspension, that you stated were voluntarily published by the Southern Railway from mines on your line in the Boonville and Princeton Groups to Rockford, Freeport, and the [fol. 1357] other Northern Illinois points involved?

A. I don't necessarily take the position that the rates that are published and suspended are absolutely correct in so far as the differentials are concerned, and that brings us back to the two rates from the Brazil-Clinton and Linton-Sullivan Groups. I would like to see it straightened out as nearly as possible as the Commission did in I. & S. 4368.

Exam. Trezise: When you say straightened out, you mean what they did in that proceeding?

The Witness: Yes.

Exam. Trezise: What they approved in that proceeding, you call that straightening it out?

The Witness: Yes; but it wasn't straightened out under the suspended basis, in that they still continued to publish from the Linton-Sullivan Group two lines of rates, and we take the position the Commission in 4368 intended that one rate be published from all mines in the group.

By Mr. Stadell:

Q. Do I understand your testimony then is offered in opposition to the proposed increased rates that the Southern Railway had voluntarily published from its Boonville and Princeton mines to this Northern Illinois territory?

A. To the extent that it is different from those approved by the Commission in I. & S. 4368, that would be a correct statement.

Q. And those are the rates that you are advocating in [fol. 1358] lieu of any of the rates that are involved in this proceeding?

A. Those fixed by the Commission or approved in I. & S. 4368.

Q. And by those you mean those that you say they approved from the Indiana mines?

A. Yes.

Q. Are you advocating the approval of the rates that were involved in that case from the Illinois mines?

A. I think it naturally follows that we would.

Q. Now, you stated in answer to a question by Mr. Cardy that you thought these differences or differentials of 7 cents Princeton over Linton-Sullivan for about 63 miles difference in distance, and the 3 cents Boonville over Princeton for about 40 miles difference in distance, were proper and

reasonable, based upon your knowledge of the transportation conditions in this territory. Is that what you stated?

A. I don't know. I believe I stated that we were relying on the Commission's decision in Docket 4368.

Q. That is all you are relying on, that decision?

A. Yes.

Q. And you have no further justification to offer in support of what you are advocating except that decision?

A. That and the fact that the differentials have been in effect for a long period of time, and I rely on what the Interstate Commerce Commission has said in many other cases that once a group adjustment has been established it [fol. 1359] shouldn't be lightly considered or disturbed.

Q. Has the Interstate Commerce Commission in any case that you know of ever prescribed the 7 cent differential Princeton over Linton-Sullivan, or Boonville over Princeton 3 cents?

A. 4368.

Q. They prescribed it?

A. Approved it in 4368.

Q. Do you know any case in which those differentials have ever been prescribed?

A. No.

Q. Do you know of any other case where as you say they have ever been approved between those groups?

A. I believe I stated that in my direct, Mr. Stadell. I stated this in my direct: The Interstate Commerce Commission has given consideration to this question, the latest decision being I. & S. 4368, decided April 10, 1939, reported in 232 ICC 151. Finding 2 of that decision is shown on page 170 of the report, and found not justified a differential in excess of 7 cents Princeton over Sullivan and 3 cents Boonville over Princeton. At page 167 of the same report the Commission refers to the fact that in Illinois Coal Traffic Bureau case, reported in 204 ICC 225, the same question was there before them.

Q. Well, the last case you referred to involved only the differentials between Southern Illinois and the Indiana groups, didn't it?

A. 4368?

[fol. 1360] Q. No, the last case you referred to, 204; if you know?

A. I can tell you by referring to it.

Q. That is all right. The decision will speak for itself. Now, prior to 1930 there were a great many mines located on the Southern Railway in the Boonville Group, were there not?

A. Prior to 1930?

Q. Yes.

A. I can't say.

Q. Do you mean to say that you don't know whether there has been a change in that group or not since 1930?

A. You are speaking of the Boonville Group?

Q. I am speaking of the Boonville Group. I thought you knew this rate adjustment down there.

A. I know the rate adjustment fairly well.

Q. Well, you have been talking about these groups being maintained for a long, long time.

A. I haven't checked back to see what mines have been frozen and those that have been open. But I think there were quite a number of mines at one time in the Boonville Group.

Q. On the New York Central Railroad Company?

A. No, I don't know as to that.

Mr. Cardy: Are you talking about Boonville?

Mr. Stadell: I am talking about Boonville, yes.

By Mr. Stadell:

Q. You don't know, then, that in 1930 or about that time the major portion of the mines in the Boonville Group [fol. 1361] were shifted into the Princeton Group for rate making purposes, do you?

A. No, I don't know that.

Q. You mean to say you don't know whether there has been a change in the Boonville Group or not, then?

A. I say, I didn't know what mines were initially operating in the Boonville Group and those that may have been closed.

Q. That isn't what I asked you. I asked you if you know there has been a substantial change in the Boonville Group as far as mines are concerned that were located in that group?

Mr. Cardy: Mr. Stadell——

Mr. Stadell: Just a minute, do you have an objection?

Mr. Cardy: No, but ——

Mr. Stadell: Then don't interrupt. If you have an objection, say so.

Mr. Cardy: Go ahead.

Mr. Stadell: Will you read my question.

(Question read.)

Mr. Stadell: Since 1930.

The Witness: No.

By Mr. Stadell:

Q. Have you ever been employed by a coal mining company?

A. No.

Q. Have you ever sold coal?

A. No, sir.

[fol. 1362] Q. Have you any knowledge of the coal used by the various plants in the suspended territory?

A. No.

Q. Yet you expressed the opinion that if there is any change in the differences in rates between these groups that that is going to affect the flow of the coal from those groups?

A. That is as experience teaches us and by our contact with shippers.

Q. Well, give us your experience with respect to these mines.

A. That is what our operators in the mine territory tell us.

Q. You are depending solely on what they tell you?

A. Yes, that is right.

Q. Not on anything you know about it?

A. That is right.

Q. You said that the movement was of little consequence from the Boonville Group until the 3 cent differential was established over Princeton, is that what you said?

A. Yes.

Q. When was that established?

A. The 3 cent differential?

Q. Yes.

A. Sometime in 1919.

Q. Now, give us the movement from the mines in the Boonville District to any point in the affected territory before that differential was established and for any year since.

[fol. 1363] A. I don't have it.

Q. You mean to say you don't know what that comparative movement was?

A. We probably have it in our files back to that time, but I don't have it here and I saw no necessity for working it up.

Q. You didn't think it was necessary then, before expressing your opinion that the movement was of little consequence before that differential was established, to determine that?

A. I did check it, but I can't tell you the tonnage now.

Q. You didn't think it was necessary to make that comparison?

A. As to the exact tonnage?

Q. Yes.

A. No, I didn't think it was necessary.

Q. You have no present knowledge as to what that movement was before the differential of 3 cents was established or what it has been for any years since?

A. What the tonnage was to the affected territory?

Q. Yes.

A. No.

Q. How can you say then from your present knowledge that the movement was of little consequence from the Boonville Group before the 3 cent differential was established?

A. I had occasion to review our files on the subject at that time.

Q. But you don't remember anything about it now?

[fol. 1364] A. No, not as to the tonnage.

Q. How many mines were located in the Boonville Group prior to May, 1919, when this 3 cent differential over Princeton was established?

A. I don't know.

Q. Do you know whether there was any?

A. You are speaking of the Boonville Group?

Q. Yes.

A. Apparently there was. There were rates published.

Q. You don't know now whether there was any or not?

A. There must have been if there were rates published there.

Q. The rates were published in May, 1919. I am asking you whether there were any mines in that group prior to May, 1919, and if there were, what those mines were.

A. I can't give you any specific reference to any particular mines.

Q. You don't know of your own knowledge then if there were any mines prior to May, 1919, in that group?

A. Only what were shown in the tariff.

Q. What was shown in the tariff?

A. That there were mines in the Boonville Group.

Q. What did the tariff show those mines to be?

A. I haven't the tariff here. I don't know.

Q. So that as far as your present knowledge is concerned, you can't say if there were any or what the mines were?

[fol. 1363] A. Only what was shown in the tariff.

Q. And you don't know what that was?

A. No, not at this time.

Q. Now, the Illinois Central and the CB&Q and the C&EI and the New York Central, all of which you said you interchanged traffic with from your Boonville and Princeton mines going to the suspended territory, serve mines in the Southern Illinois Group, do they not?

A. Name them again, C&EI, CB&Q and what others?

Q. C&EI, New York Central, Illinois Central, and the CB&Q.

A. Yes, that is correct.

Q. Am I to understand, what you are asking the Interstate Commerce Commission to do here is to enter some kind of an order that would compel those railroads to join with you in rates from the Boonville Group, for example, to Rockford 10 cents per ton lower than they maintain from their mines in Southern Illinois, despite the fact that the haul from your Boonville mines to that point are about 50 miles longer than from their Southern Illinois mines?

A. I am asking them to do what they did in I. & S. 4368.

Q. Will you answer my question, please.

A. The answer to your question is, yes.

Q. That is what you are asking them to do. Do you know of any provision of the Interstate Commerce Commission Act that would permit them to do that?

[fol. 1366] Mr. Dixon: Mr. Examiner, I don't think that last question is proper.

Exam. Trezise: I don't think that is proper. Ask him about facts, not about the Act.